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November, 1926

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The Senate's Place in American Government

Legislative History of Senate Cloture

Present Cloture Rules in Senate and House

Glossary of Parliamentary Terms

The Dawes Proposal for Senate Cloture

Pro and Con Discussion

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Contents for November, 1926

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The Sixty-ninth Congress

Duration of the 69th Congress, March 4, 1925-March 4, 1927
First, or "Long" Session, Convened December 7, 1925, Adjourned July 3, 1926
Second, or "Short" Session, Will Convene December 6, 1926, Will Expire March 4, 1927

Special Feature This Month:

Should Debate in the Senate Be Further Limited?

A Discussion of the Dawes Proposal for Senate Cloture

Structure of Senate and House
Place of Senate in American Government
History of Senate's Cloture Rules
Present Cloture Rules in Senate
The Present House Rule
Cloture in British Parliament
Glossary of Parliamentary Terms
Pro and Con Discussion

Structural Differences Between the Senate and House

As Provided by the United States Constitution

The House of Representatives.

ARTICLE I, Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States. . . .

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and have been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Article I, Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

The Senate

Article I, Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote. Amended by: Amendment XVII. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

Article I, Section 3. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgement, and Punishment, according to Law.

Article II, Section 1. He [the President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provide two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next session.

House and Senate.

Article I, Section 5. Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgement require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

The United States Senate

Its Place in American Government

By Henry Cabot Lodge

Henry Cabot Lodge of Massachusetts was a member of the Massachusetts House of Representatives in 1880 and 1881. In 1886 he was elected to the United States House of Representatives, serving six years in the 50th, 51st and 52nd Congresses. In 1893 he entered the United States Senate where he served for thirty-one years, until his death in 1924

UNDER the provisions of the Constitution framed in 1787 the Senate met for the first time on the fourth day of March, 1789. The quorum required by the Constitution was not obtained until the 6th of April, when the Senate was organized by the election of John Langdon of New Hampshire as President pro tempore and by the appointment of a Secretary and other subordinate officers. From that day to this the Senate has never been, legally speaking, reorganized. It has been in continuous and organized existence for one hundred and thirty-two years, two-thirds of the Senate being always in office, there never has been such a thing as a Senate requiring reorganization, as is the case with each newly elected House. When, at intervals of four years, a new President comes into office, the first act at twelve o'clock noon on that day is for the outgoing Vice-President or for the President pro tempore of the Senate to administer the oath to the new Vice-President and hand him the gavel, the symbol of the presiding officer in a body then and there ready to transact business. There is no break in the existence of the Senate, and before the President elect can be inaugurated or the members elect of the House of Representatives can meet and choose a Speaker, the Senate of the United States has transferred the authority from one presiding officer to another, and goes forward with its organization unchanged and in full possession of all the qualifications necessary to the performance of its duties. There may be no House of Representatives, but merely an unorganized body of members elect; there may be no President duly installed in office, but there is always the organized Senate of the United States. This fact, universally known and yet generally wholly unremarked, is not without an important significance.

When the delegates from the various States gathered at Philadelphia in May, 1787, for the purpose of framing a new and better general government for the Union of States, it must never be forgotten, if we would understand all which followed, that these delegates represented States and not people. Alexander Hamilton personally signed the Constitution but New York did not because his two associates from that State were opposed to it and therefore, as a majority of the delegation, they controlled the vote of the State.

The sentiment in the larger States was generally favorable to the idea of a new Constitution, but the smaller States, which were in the majority when the vote was by States regarded all changes with profound suspicion. They feared, and not wholly without reason, that if too much power was given to the central government, acting directly upon the people and deriving its power from the people at large, three or four of the largest States would be able practically to control the government of the Union. This apparently irreconcilable difference of opinion came very near wrecking the efforts of the Convention of 1787.

It is not necessary to trace the long struggle between these opposing forces which ended in the most famous compromise of the Constitution of which the Senate was the vital element and which finally enabled the Convention to bring its work to a successful conclusion. It is sufficient here to point out that as the Constitution was necessarily made by the States alone, they yielded with the utmost reluctance to the grants of power to the people of the United States as a whole and sought in every way to protect the rights of the several States against invasion by the National authority. The States, it must be remembered, as they then stood were all sovereign States. Each one possessed all the rights and attributes of sovereignty, and the Constitution could only be made by surrendering to the general government a portion of these sovereign powers.

In the Senate accordingly the States endeavored to secure every possible power which would protect them and their rights. They ordained that each State should have two Senators without reference to population, thus secur-

ing equality of representation among the States. They then provided in Article V of the Constitution that "no State without its consent should be deprived of its equal suffrage in the Senate."

This clause, it will be noted is the only provision of the Constitution which requires the assent of every State for amendment or change. Having made the Senate in this way as immovable in its representation as possible, and having provided that its members should be chosen by the legislatures of the States, thus securing it, as they believed, from the sudden changes incident to popular voting, they proceeded so far as they could to invest it with the most important of the sovereign powers which they themselves possessed.

They gave to the Senate not only legislative but executive and judicial powers. There is only one limitation upon the legislative power of the Senate. Bills to raise revenue must originate in the House of Representatives, but the Senate can propose or concur with amendments as on other bills. This unlimited power of amendment has made the power of originating bills to raise revenue reserved to the House of comparatively little moment. In 1883 the Senate struck out all after the enacting clause of the Tariff Bill and sent over to the House their own bill which was adopted by the House. In 1894 the Senate changed fundamentally the Tariff Bill of that year which had come from the House, and the House accepted the bill as amended by the Senate without any alteration. In 1909 the Tariff Bill, when returned from the Senate, carried eight hundred and forty-seven amendments. These instances will show that even on Revenue Bills, which must originate in the House, the powers of the Senate have been practically unlimited. In practice, the Senate, although possessing the power to originate bills appropriating money, has ceded to the House this right in the case of the great Appropriation Bills. The Senate still originates bills containing an appropriation of money for a single object, but on the great Supply Bills it is content with its right of unlimited amendment, which it always exercises without restraint. In all other respects, so far as legislation is concerned the Senate is on an absolute equality with the House and during the one hundred and thirty-two years of its existence has originated more important legislation than the popular branch.

The Senate shares with the President the executive functions. No treaty can be made without the assent of two-thirds of the Senate. The President can enter upon any negotiations that he pleases, but no treaty which he may make can become the supreme law of the land without the consent of the Senate. The President can nominate, but without the advice and consent of the Senate he cannot appoint "Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by law." As provided in the same section of the Constitution, the Congress may by law vest the appointment of such inferior officers, as they may think proper, in the President alone, in the Courts of law, or the Heads of Departments. Thus the Senate has a controlling voice in the appointment of all important officers, and this right of control cannot be taken from them in the case of even inferior officers except by their own consent.

The judicial functions of the Senate consist in its being the court before which all impeachments must be tried. They can even try the President of the United States upon articles presented by the House, as was done in one instance, and in that event the Chief Justice presides over their deliberations, but in all other cases of impeachment the Senate selects its own presiding officer.

To Congress is given the power to declare war. To the President and the Senate alone is given the power to make a treaty of peace, as is the case with all other treaties. Thus it will be observed that the assent of the Senate is necessary both to peace and war. War can be declared without the assent of the Executive, and peace can be made without the assent of the House, but neither war nor peace can be made without the assent of the Senate.

The makers of the Constitution also gave to the Senate the longest tenure conceded to any of the political branches of the government—six years—and this term enabled the Convention to arrange the election of Senators in such a way that only one-third of the Senate goes out at each biennial national election and the inevitable result of such an arrangement was that two-thirds of the Senators were always in organized existence.

The Seventeenth amendment changing the method of electing Senators which has been adopted affects in no way the powers, the tenure of office, or the permanency of existence conferred upon the Senate by the makers of the Constitution. They provided that Senators should be elected by the legislatures because they wished in every possible manner to impress upon the office of Senator the State characteristics and to make it as clear as possible that a Senator represented a State and not a constituency. They also believed that legislatures would choose better men to fill the senatorial office than could be expected from a popular vote. It is also true that legislatures, as a rule, although not always, have had a strong sense of the importance of retaining in the public service men of distinguished ability, high character, and long experience. These Senators of long service, no matter how much they might be divided on purely political issues, in dealing with that wide range of questions which are not necessarily connected with party were all animated with an earnest desire that the Government of the United States should be properly carried on. They have constituted a most important element in our past history and have exercised a very great influence in forming the traditions and guiding the operations of the Government of the United States.

The makers of the Constitution, who were nearly all of English or of Scotch descent, had been bred in the belief which had become ingrained in the English-speaking people during many years of conflict, that the power of the sovereign ought to be limited.

They knew, of course, that in the last resort the popular will would control and ought to control absolutely, but upon the democracy for which they were forming a government they wished to put limitations. They desired to give ample space for deliberation, and for this reason they sought for checks and balances, gave the federal judges a life tenure, raised the courts above the dusty atmosphere of the hustings, and strove to make the operation of the popular will depend for its final expression upon the calm second thought of the community and not be governed by the passions of the moment. They tried to secure limitations by making amendment to the Constitution difficult by separating the judicial executive and legislative powers into three coordinate and inde-

pendent branches, and by the peculiar power and authority with which they invested the Senate of the United States.

Except on some rare occasions the Senate has been the conservative part of the legislative branch of the government. The closure and other drastic rules for preventing delay and compelling action which it has been found necessary to adopt and apply in the House of Representatives have never except in a most restricted form been admitted in the Senate. Debate in the Senate has remained practically unlimited, and despite the impatience which unrestricted debate often creates, there can be no doubt that in the long run it has been most important and indeed very essential to free and democratic government to have one body where every great question could be fully and deliberately discussed. Undoubtedly there are evils in unlimited debate, but experience shows that these evils are far outweighed by the benefit of having one body in the government where debate cannot be shut off arbitrarily at the will of a partizan majority. The Senate, I believe, has never failed to act in any case of importance where a majority of the body really and genuinely desired to have action, and the full opportunity for deliberation and discussion, characteristic of the Senate, has prevented much rash legislation born of the passion of an election struggle, and has perfected still more that which ultimately found its way to the statute books.—*Extracts, see 1, p. 323.*

Legislative History of Cloture Rules in the Senate

Introduction.

IN 1604, the practice of limiting debate in some form, was introduced in the British Parliament by Sir Henry Vane. It became known in parliamentary procedure as the "previous question" and is described in Section 34 of Jefferson's Manual of Parliamentary Practice, as follows:

"When any question is before the House, any member may move a previous question, whether that question (called the main question) shall now be put. If it pass in the affirmative, then the main question is to be put immediately, and no man may speak anything further to it, either to add or alter."

In 1778, the Journals of the Continental Congress also show that the "previous question" was used. Section 10 of the Rules of the Continental Congress reading: "When a question is before the House no motion shall be received unless for an amendment, for the previous question, to postpone the consideration of the main question, or to commit it." In the British Parliament and the Continental Congress the "previous question" was not used to limit debate but to avoid a vote on a given subject.

"Previous Questions" in the Senate.

1789—At the establishment of our Government, debate was practically unlimited in the Senate, "the restraints placed upon it being slight and seldom enforced. They were, that no motion should be debated until seconded, that the decision of all questions of order should be made by the President without debate, and that no member should speak more than twice in any one debate on the same day without leave of the Senate."[1] The previous question was provided for in the first Senate rules found in the Annals of the First Congress, from 1789 to 1791. Rules 8, 9 and 11, related to the "previous question," but was rarely used. Like the precedents for the rule in the British Parliament and the Continental Congress, when it was used in the early days of the Senate, it did not limit debate, but avoided a vote on a given subject. "The 'previous question' was debatable and was used in both legislative and executive sessions and in the trial of impeachments, but not on amendments, or in the Committee of the whole."[1]

1806—On March 26, 1806, when the Senate rules were revised, the reference to the "previous question" was omitted, but in that year also debate upon a motion for adjournment was forbidden.

1807—In the following year, 1807, debate on an amendment at the third reading of a bill was also forbidden and from this time until 1840 there was no further limitations on debate in the Senate.

1841—On July 12, 1841, Henry Clay brought forth a proposal for the introduction of the "previous question," which he stated was necessary by the abuse which the minority had made of the unlimited privilege of debate. In opposing Clay's motion, Senator Calhoun said, "There never had been a body in this or any other country in which, for such a length of time, so much dignity and decorum of debate had been maintained." Clay's proposition met with very considerable opposition and was abandoned.

"Unanimous Consent" Agreements.

1847—In 1847, in the Twenty-ninth Congress, the custom of securing "unanimous consent" agreements for the limitation of debate was first established. The motion for unanimous consent was then used to induce the minority in the Senate to fix a day for a vote on the Oregon Bill, which had been debated for two months.

1850—On July 27, 1850, Senator Douglas submitted a resolution permitting the use of the "previous question." The resolution was debated, and laid on the table after considerable opposition had been expressed.

1862—As the business to be transacted by the Senate increased, proposals to limit debate were introduced frequently in the following Congresses, but none were adopted until the Civil War. On January 21, 1862, Senator Wade introduced a resolution stating that "in consideration in secret session of subjects relating to the rebellion, debate should be confined to the subject matter and limited to five minutes, except that five minutes be allowed any member to explain or oppose a pertinent amendment." On January 29, 1862, the resolution was debated and adopted.

1868—In 1868 a rule was adopted providing that: "Motions to take up or to proceed to the consideration of any question shall be determined without debate, upon the merits of the question proposed to be considered." The object of this rule, according to Senator Edmunds, was to prevent a practice which had grown up in the Senate, "when a question was pending, and a Senator wished to deliver a speech on some other question, to move to postpone the pending order to deliver their

[1] Stidham, Clara Hannah, "Origin and Development of the United States Senate," p. 59-68.

speech on the other question." According to Mr. Turnbull the object of the rules was to prevent the consumption of time in debate over business to be taken up. The rule was interpreted as preventing debate on the merits of a question when a proposal to postpone it was made.[3]

1869—A resolution pertaining to the adoption of the "previous question" was introduced in 1869, and three other resolutions limiting debate in some form were introduced in the first half of 1870.

The Anthony Rule.

1870—On December 6, 1870, in the third session of the Forty-first Congress, Senator Anthony, of Rhode Island, introduced the following resolution: "On Monday next, at one o'clock, the Senate will proceed to the consideration of the Calendar and bills that are not objected to shall be taken up in their order; and each Senator shall be entitled to speak once and for five minutes, only, on each question; and this order shall be enforced daily at one o'clock 'till the end of the calendar is reached, unless upon motion, the Senate should at any time otherwise order." On the following day, December 7, 1870, the resolution was adopted. This so-called Anthony rule for the expedition of business was the most important limitation of debate yet adopted by the Senate. The rule was interpreted as placing no restraints upon the minority however, inasmuch as a single objection could prevent its application to the subject under consideration.

1871—On February 22, 1871, another important motion was adopted which had been introduced by Senator Pomeroy and which allowed amendments to appropriation bills to be laid on the table without prejudice to the bill.

1872—On April 19, 1872, a resolution was introduced, "that during the remainder of the session it should be in order, in the consideration of appropriation bills, to move to confine debate by any senator, on the pending motion to five minutes." On April 29, 1872, this resolution was finally adopted, 33 yeas to 13 nays. The necessity for some limitation of debate to expedite action on these annual supply measures caused the adoption of similar resolutions at most of the succeeding sessions of Congress.

1873—On March, 1873, Senator Wright submitted a resolution reading in part that debate shall be confined to and be relevant to the subject matter before the Senate—etc., and that the previous question may be demanded by a majority vote or in some modified form. On a vote in the Senate to consider this resolution the nays were 30 and the yeas 25.

1880—From 1873 to 1880 nine other resolutions were introduced confining and limiting debate in some form. On February 3, 1880, in the second session of the Forty-sixth Congress, the famous Anthony Rule which was first adopted on December 7, 1870, was made a standing rule of the Senate, as Rule VIII. In explaining the rule, Senator Anthony said "That rule applies only to the unobjected cases on the Calendar, so as to relieve the Calendar from the unobjected cases. There are a great many bills that no Senator objects to, but they are kept back in their order by disputed cases. If we once relieve the Calendar of unobjected cases, we can go thru with it in order without any limitation of debate. That is the purpose of the proposed rule. It has been applied in several sessions and has been found to work well with the general approbation of the Senate."[4]

Amendments to Anthony Rule.

1881—On February 16, 1881, a resolution to amend the Anthony rule was introduced. This proposed to require the objection of at least five senators to pass over a bill on the Calendar. The resolution was objected to as a form of "previous question," and defeated. Senator Edmunds in opposing the resolution said, "I would rather not a single bill shall pass between now and the 4th day of March than to introduce into this body, which is the only one where there is free debate and the only one which can under its rules discuss fully. I think it is of greater importance to the public interest in the long run and in the short run that every bill on your Calendar should fail than that any Senator should be cut off from the right of expressing his opinion . . . upon every measure that is to be voted upon here."[5]

1882—On February 27, 1882, the Anthony rule was amended by the Senate, so that if the majority decided to take up a bill on the Calendar after objection was made, that then the ordinary rules of debate without limitation would apply.[6] The Anthony Rule could only work when there was no objection whatever to any bill under consideration. When the regular morning hour was not found sufficient for the consideration of all unobjected cases on the Calendar, special times were often set aside for the consideration of the Calendar under the Anthony rule.

1882—On March 15, 1882, a rule was considered whereby "a vote to lay on the table a proposed amendment shall not carry with it the pending measure." In reference to this rule Senator Hoar (Massachusetts, R.), said: "Under the present rule it is in the power of a single member of the Senate to compel practically the Senate to discuss any question whether it wants to or not and whether it be germane to the pending measure or not. . . . This proposed amendment to the rules simply permits, after the mover of the amendment, who of course has the privilege, in the first place, has made his speech, a majority of the Senate if it sees fit to dissever that amendment from the pending measure and to require it to be brought up separately at some other time or not at all."[7] This proposed rule is now Rule XVII, of the present standing rules of the Senate.

1883—On December 10, 1883, Senator Frye, of Maine, Chairman of the Committee on Rules, reported a general revision of the Senate rules. This revision included a provision for the "previous question." Amendments in the Senate struck this provision out.

Adoption of Present Rules.

1884—On January 11, 1884, the present Senate Rules were revised and adopted.

On March 19, 1884, two resolutions introduced by Senator Harris were considered and agreed to by the Senate as follows:

(1). "That the eighth rule of the Senate be amended by adding thereto: All motions made before 2 o'clock to proceed to the consideration of any matter shall be determined without debate."

[3]Congressional Globe, Forty-first Congress, Third Session, p. 28.

[4]Congressional Record, February 5, 1880, p. 716.
[5]Congressional Record, February 16, 1881, p. 1693.
[6]Congressional Record, April 27, 1882, p. 3305.
[7]Congressional Record, March 15, 1882.

(2). "That the tenth rule of the Senate be amended by adding thereto: And all motions to change such order or to proceed to the consideration of other business shall be decided without debate."

From this time until 1890 there were 15 different resolutions introduced to amend the Senate rules as to limitations of debate, all of which failed of adoption.[7]

1890—On December 29, 1890, Senator Aldrich introduced a cloture resolution in connection with Lodge's "force bill," which was being filibustered against. The resolution read, in part, as follows: "When any bill, resolution, or other question shall have been under consideration for a considerable time, it shall be in order for any Senator to demand that debate thereon be closed. On such demand no debate shall be in order, and pending such demand no other motion, except one motion to adjourn, shall be made . . ." There were five test votes on the cloture proposal which "commanded various majorities, but in the end it could not be carried in the Senate because of a filibuster against it which merged into a filibuster on the 'force bill'."[8]

1893—In 1893 nine resolutions were introduced limiting debate, but none of them were passed.

1911—April 6, 1911, Senator Root, of New York, submitted a resolution requesting the Committee on Rules to suggest an amendment to the Senate Rules whereby the Senate could obtain more effective control over its procedure. No action was taken on the resolution.

1915—February 8, 1915, Senator Reed, of Missouri, introduced a resolution to amend Rule XXII whereby debate on the Ship Purchase Bill, "S. 6845 shall cease, and the Senate shall proceed to vote thereon . . ." The resolution did not pass in this session.

1916—From December, 1915, to September 8, 1916, the first or "long" session of the 64th Congress, there were five resolutions introduced to amend Rule XXII. The resolutions acted upon were S. Res. 131 and S. Res. 149. On May 16, 1916, the Committee on Rules reported out favorably (S. Res. 195) as a substitute for S. Res. 131 and S. Res. 149, which had been referred to it, and submitted a report (No. 447). The resolution was debated but did not come to a vote.

1917—March 4, 1917, President Wilson made a speech in which he referred to the Armed Ship Bill, defeated by filibustering. The President said in part, "The Senate has no rules by which debate can be limited or brought to an end, no rules by which debating motions of any kind can be prevented. . . . The Senate of the U. S. is the only legislative body in the world which cannot act when its majority is ready for action. . . . The only remedy is that the rules of the Senate shall be altered that it can act. . . ."—*See Washington Post, March 5, 1917.*

1917—On March 5, 1917, the Senate was called in extraordinary session by the President because of the failure of the Armed Ship Bill in the 64th Congress.

Amendments to Rule XXII.

On March 7, 1917, Senator Walsh, of Montana, D., introduced a Cloture resolution (S. Res. 5) authorizing a Committee to draft a substitute for Rule XXII, limiting debate. Senator Martin also introduced a resolution amending Rule XXII similar to S. 195, favorably reported by the Committee on Rules in the 64th Congress. The Martin resolution was debated at length and adopted March 8, 1917, 76 yeas, 3 nays, as the present amendment to Rule XXII.[9]

1918—On May 4, 1918, Senator Underwood introduced a resolution (S. Res. 235) further amending Rule XXII, reestablishing the use of the "previous question" and limiting debate during the war period.

On May 31, 1918, the Committee on Rules favorably reported out (S. Res. 235) with a report (No. 472).

June 3, 1918, the Senate debated the resolution and Senator Borah offered an amendment.

June 11, 1918, the Senate further debated the resolution and a unanimous consent agreement was reached to vote on the measure.

June 12, 1918, the resolution was further amended, by Senator Cummins.

June 13, 1918, the Senate rejected the resolution, nays, 41; and yeas, 34. (See Congressional Record, June 13, 1918, p. 7728.)

1921—From March 4, 1921, to March 4, 1923, during the 67th Congress, five resolutions were introduced to limit debate in some form. These were referred to the Committee on Rules.

1922—On November 29, 1922, upon the occasion of the famous filibuster against the Dyer Anti-Lynching Bill, a point of order was raised by the Republican floor leader against the methods of delay employed by the obstructionists which, had the chair sustained it, would have established a significant precedent in the Senate as it did in the House. The incident occured as follows:

Immediately upon the convening of the Senate, the leader of the filibuster made a motion to adjourn. Mr. Curtis made the point of order that under Rule III no motion was in order until the Journal had been read. He also made the additional point of order that the motion to adjourn was dilatory. To sustain his point, Mr. Curtis said: "I know we have no rule of the Senate with reference to dilatory motions. We are a legislative body, and we are here to do business and not to retard business. It is a well-stated principle that in any legislative body where the rules do not cover questions that may arise general parliamentary rules must apply.

"The same question was raised in the House of Representatives when they had no rule on the question of dilatory motions. It was submitted to the Speaker of the House, Mr. Reed. Mr. Speaker Reed held that, notwithstanding there was no rule of the House upon the question, general parliamentary law applied, and he sustained the point of order." (See Hind's Precedents, p. 358.)

The Vice President sustained Mr. Curtis' first point of order in regard to Rule III but did not rule on the point that the motion was dilatory.

1925—On March 4, 1925, the Vice President, Charles G. Dawes, delivered his inaugural address to the Senate, in which he recommended that debate be further limited in the Senate.[10]

The Underwood Resolution.

On March 5, 1925, Senator Underwood introduced the following Cloture resolution (S. Res. 3) embodying the

[7] U. S. Senate Privileges and Precedents, 1893, Compiled by G. P. Furber, pp. 217-230.

[8] Rogers, Lindsay, The American Senate, 1926, also Congressional Record, January 22, 1891.

[9] See Text of Present Rules of the Senate in this issue, p. 298.

[10] See Congressional Digest, March, 1925, for inaugural speech of the Vice President.

Vice President's recommendation on further limitation of debate, which was referred to the Committee on Rules.

"Resolved, That the rules of the Senate be amended by adding thereto, in lieu of the rule adopted by the Senate for the limitation of debate on March 8, 1917, the following:

"1. There shall be a motion for the previous question which, being ordered by a majority of Senators voting, if a quorum be present, shall have the effect to cut off all debate and bring the Senate to a direct vote upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill to its passage or rejection. It shall be in order, pending the motion for, or after previous question shall have been ordered on its passage, for the presiding officer to entertain and submit a motion to commit, with or without instructions, to a standing or select committee.

"2. All motions for the previous question shall, before being submitted to the Senate, be seconded by a majority by tellers if demanded.

"3. When a motion for the previous question has been seconded, it shall be in order, before final vote is taken thereon, for each Senator to debate the proposition to be ... ted for one hour."

Other resolutions introduced in the first session of the 69th Congress limiting debate were S. Res. 25; S. Res. 225; S. Res. 217; S. Res. 59; S. Res. 77; S. Res. 76; which were also referred to the Committee on Rules.

Outstanding Senate Filibusters

From 1841 to 1923

1841—A bill to remove the Senate printers was filibustered against for ten days.

1841—A bill relating to the Bank of the United States was filibustered for several weeks and caused Clay to introduce his cloture resolution.

1846—The Oregon Bill was filibustered for two months.

1863—A bill to suspend the writ of habeaus corpus was filibustered.

1876—An army appropriation bill was filibustered against for twelve days, forcing the abandonment of a rider which would have suspended existing election laws.

1880—A measure to reorganize the Senate was filibustered from March 24th to May 16th (by an evenly divided Senate, until two Senators resigned, giving the Democrats a majority.

1890—The Blair Education Bill was filibustered.

1890—The "Force Bill," providing for federal supervision of elections was successfully filibustered for twenty-nine days. This resulted in the cloture resolution introduced by Senator Aldrich which was also filibustered and the resolution failed.

1893—An unsuccessful filibuster lasting forty-two days was organized against a bill for the repeal of the Silver Purchase Act.

1901—Senator Carter successfully filibustered a River and Harbor Bill because it failed to include certain additional appropriations.

1902—There was a successful filibuster against the Tri-State Bill proposing to admit Oklahoma, Arizona and New Mexico to statehood, because the measure did not include all of Indian Territory according to the original boundaries.

1903—Senator Tillman, of North Carolina, filibustered against a deficiency appropriation bill because it failed to include an item paying his State a war claim. The item was finally replaced on the bill.

1907—Senator Stone filibustered against a ship subsidy bill.

1908—Senator La Follette led a filibuster lasting twenty-eight days against the Vreeland-Aldrich Emergency Currency Law. The filibuster finally failed.

1911—Senator Owen filibustered a bill proposing to admit New Mexico and Arizona to statehood. The House had accepted New Mexico, but refused Arizona because of her proposed constitution. Senator Owen filibustered against the admission of New Mexico until Arizona was replaced on the measure.

1911—The Canadian Reciprocity Bill passed the House and failed through a filibuster in the Senate. It passed Congress in an extraordinary session but Canada refused to accept the proposition.

1913—A filibuster was made against the Omnibus Public Building Bill by Senator Stone of Missouri until certain appropriations for his State were included.

1914—Senator Burton, of Ohio, filibustered against a River and Harbor Bill for twelve hours.

1914—Senator Gronna filibustered against acceptance of a conference report on an Indian Appropriation Bill.

1914—In this year also the following bills were debated at great length, but finally passed: Panama Canal Tolls Bill, thirty days; Federal Trade Commission Bill, thirty days; Clayton Amendments to the Sherman Act, twenty-one days; Conference Report on the Clayton Bill, nine days.

1915—A filibuster was organized against President Wilson's Ship Purchase Bill by which German ships in American ports would have been purchased. The filibuster was successful and as a result three important appropriation bills failed.

1917—The Armed Ship Bill of President Wilson was successfully filibustered, and caused the defeat of many administration measures. This caused the adoption of the Martin resolution embodying the President's recommendation for a change in the Senate Rules, on limitation of debate. (See amendment to Rule XXII of Senate Rules p. 298.)

1919—A filibuster was successful against an Oil and Mineral leasing Bill, causing the failure of several important appropriation bills and necessitating an extraordinary session of Congress.

1921—The Emergency Tariff Bill was filibustered against in January, 1921, which led Senator Penrose to present a cloture petition. The cloture petition failed, but the tariff bill finally passed.

1922—The Dyer Anti-Lynching Bill was successfully filibustered against by a group of southern Senators.

1923—President Harding's Ship Subsidy Bill was defeated by a filibuster.

The Committee on Rules of the Senate

Its Powers and Duties

UNDER the Constitution of the United States each of the two Houses of Congress is authorized to determine the Rules of its proceedings. This makes the Committee on Rules of each House very important and for this reason strong men are usually selected for membership. The Committee on Rules of the Senate is composed of twelve members with Senator Curtis, the Republican floor leader, Chairman. Senator Robinson, of Arkansas, the Democratic floor leader, is a member on the minority side.

The Committee on Rules of the Senate has jurisdiction over the rules of that body and forms the rules for its government. All amendments to the rules are referred to it for consideration.

It has charge of the preparation of the Senate Manual, which is a very important duty.

It has charge of the Senate wing of the Capitol which includes the assignment of rooms and it has control of the Senate Restaurant.

It has charge of the Senate Office Building and the assignment of rooms to Senators in that building.

The members are recommended by the Committee on Committees and must be approved by the Senate.

The following Rule 40, indicates how particular the Senate is in regard to changing the rules, to wit:

"No motion to suspend, modify or amend any rule, or any part thereof, shall be in order, except on one day's notice in writing, specifying precisely the rule or part proposed to be suspended, modified, or amended and the purpose thereof, except by unanimous consent."

Some important changes in the rules have been made by the Committee in recent years. The Curtis rule which prohibits Conferees from inserting in their reports matters not committed to them by either House and from striking from a measure matters agreed to by both Houses, is the most important for it prevents the conferees from legislating in their reports and has shut out of legislation the "jokers" that frequently appeared.

The question of changing the rules limiting debate has been before the Committee for a number of years but the only amendment recommended was the one allowing two-thirds of the Senate to close debate. (Amendment to Rule XXII.)

Text of Present Cloture Rule of the Senate

Rule XXII

Precedence of Motions

When a question is pending, no motion shall be received but—

To Adjourn. To adjourn to a day certain, or that when the Senate adjourn it shall be a day certain. To take a recess. To proceed to the consideration of executive business. To lay on the table. To postpone indefinitely. To postpone to a day certain. To commit. To amend. Which several motions shall have precedence as they stand arranged; and the motion relating to adjournment, to take a recess, to proceed to the consideration of executive business, to lay on the table, shall be decided without debate. (Jefferson's Manual, Sec. XXXIII.)

Amendment to Rule XXII

(*Adopted March* 8, 1917)

If at any time a motion, signed by sixteen Senators, to bring to a close the debate upon any pending measure is presented to the Senate, the presiding officer shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the presiding officer shall, without debate, submit to the Senate by an aye-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

And if that question shall be decided in the affirmative by a two-thirds vote of those voting, then said measure shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the pending measure, the amendments thereto, and motions affecting the same, and it shall be the duty of the presiding officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy and appeals from the decision of the presiding officer, shall be decided without debate.

Other Senate Rules on Limitation of Debate

Rule VII

Morning Business

2. * * It shall not be in order to interrupt a Senator having the floor for the purpose of introducing any memorial, petition, report of a committee, resolution, or bill. It shall be the duty of the Chair to enforce this rule without any point of order hereunder being made by a Senator.

3. Until the morning business shall have been concluded and so announced from the Chair, or until the hour of 1 o'clock has arrived, no motion to proceed to the con-

sideration of any bill, resolution, report of a committee, or other subject upon the Calendar shall be entertained by the Presiding Officer, unless by unanimous consent; and if such consent be given the motion shall not be subject to amendment, and shall be decided without debate upon the merits of the subject proposed to be taken up * *.

Rule VIII (Anthony Rule)

Order of Business

At the conclusion of the morning business for each day, unless upon motion the Senate shall at any time otherwise order, the Senate will proceed to the consideration of the Calendar Bills and Resolutions, and continue such considerations until 2 o'clock; and bills and resolutions that are not objected to shall be taken up in their order, and each Senator shall be entitled to speak once and for five minutes only upon any question; and the objection may be interposed at any stage of the proceedings, but upon motion the Senate may continue such consideration; and this order shall commence immediately after the call for "concurrent and other resolutions," and shall take precedence of the unfinished business and other special orders. But if the Senate shall proceed with the consideration of any matter notwithstanding an objection, the foregoing provisions touching debate shall not apply. (Jefferson's Manual, Sec. XIV.)

All motions made before 2 o'clock to proceed to the consideration of any matter shall be determined without debate. (Jefferson's Manual, Sec. XIV.)

Rule IX

Order of Business

Immediately after the consideration of cases not objected to upon the Calendar is completed, and not later than 2 o'clock, if there shall be no special orders for that time, the Calendar of General Orders shall be taken up and proceeded with in its order, beginning with the first subject on the Calendar next after the last subject disposed of in proceeding with the Calendar; and in such case the following motions shall be in order at any time as privileged motions, save as against a motion to adjourn, or to proceed to the consideration of executive business, or questions of privilege, to wit:

First. A motion to proceed to the consideration of an appropriation or revenue bill.

Second. A motion to proceed to the consideration of any other bill on the Calendar, which motion shall not be open to amendment.

Third. A motion to pass over the pending subject, which if carried shall have the effect to leave such subject without prejudice in its place on the Calendar.

Fourth. A motion to place such subject at the foot of the Calendar.

Each of the foregoing motions shall be decided without debate and shall have precedence in the order above named, and may be submitted as in the nature and with all the rights of questions of order. (Jefferson's Manual, Secs. XIV, XXXIII.)

Rule X

Special Orders

1. Any subject, may, by vote of two-thirds of the Senate present, be made a special order; and when the time so fixed for its consideration arrives the Presiding Officer shall lay it before the Senate, * *.

2. * * and all motions to change such order, or to proceed to the consideration of other business shall be decided without debate.

Rule XI

Objections to Reading a Paper

When the reading of a paper is called for, and objected to, it shall be determined by a vote of the Senate, without debate.

Rule XII

Voting, Etc.

1. When the yeas and nays are ordered, the names of Senators shall be called alphabetically; and each Senator shall, without debate, declare his assent or dissent to the question ,unless excused by the Senate; * *.

2. When a Senator declines to vote on call of his name, he shall be required to assign his reasons therefor, and having assigned them, the Presiding Officer shall submit the question to the Senate: "Shall the Senator, for the reasons assigned by him, be excused from voting?" which shall be decided without debate, * *.

Rule XIX

Debate

1. When a Senator desires to speak, he shall rise and address the Presiding Officer, and shall not proceed until he is recognized, and the Presiding Officer shall recognize the Senator who shall first address him. No Senator shall interrupt another Senator in debate without his consent, and to obtain such consent he shall first address the Presiding Officer; and no Senator shall speak more than twice upon any one question in debate on the same day without leave of the Senate, which shall be determined without debate.

Rule XX

Questions of Order

1. A question of order may be raised at any state of the proceedings, except when the Senate is dividing, and, unless submitted to the Senate, shall be decided by the Presiding Officer without debate, subject to an appeal to the Senate. * *.

Rule XXVII

Reports of Conference Committees

1. The presentation of reports of committees of conference shall always be in order, except when the Journal is being read or a question of order or a motion to adjourn is pending, or while the Senate is dividing; and when received the question of proceeding to the consideration of the report, if raised, shall be immediately put, and shall be determined without debate.—*Extracts, see 5, p. 323.*

How "Cloture" Has Been Used in the Senate

Use of Previous Question

THE RULES adopted by the Senate on April 16, 1789, provided for the "previous question." This was invoked four times in the succeeding seventeen years but was ruled out of order on one of these occasions. During the first session of the Sixth Congress Jefferson (as Vice President) ruled that the previous question was not in order on an amendment, but when a new code of rules was agreed to on March 26, 1806, the previous question was not mentioned.

Use of Rule XXII

The present cloture rule of the Senate is the amendment to Rule XXII adopted by the Senate March 8, 1917. The rule has been put into effect only two times in the nine

years since its adoption. Two months after it had been adopted Senator Chamberlain attempted to invoke it and apply it to the national defense legislation then under consideration but the motion was withdrawn and a unanimous consent agreement was entered into setting a day for a vote.

Cloture was actually applied for the first time in the debate on the Treaty of Versailles, when, after a discussion which had run for several months, Senator Hitchcock (Nebraska, Democrat), on November 13, 1919, presented the petition required by the Senate rule with 23 signatures—seven more than the necessary number. Two days later the motion was voted on by the Senate and cloture was adopted by a vote of 78 to 16.

In January, 1921, when the Emergency Tariff Bill was pending in the Senate and was being filibustered against, Senator Penrose presented the required petition. It came before the Senate on February 2nd, but secured only a majority of one instead of the necessary two-thirds.

On July 5, 1922, Senator McCumber's closure petition for a vote on the Fordney-McCumber Tariff Bill was rejected—45 yeas to 35 nays.

The second successful appeal to the rule was in debate on the World Court. The measure had been discussed off and on for at least three years, but formal debate did not begin until December 17, 1925. Closure was applied on January 25, 1926, and the final vote came on January 27, when the Senate decided 76 to 16 that the United States should adhere.

On June 1, 1926, the Senate refused to apply closure by a vote of 46 to 33 for a Migratory Bird Bill.

Use of Unanimous Consent.

A species of closure is also the unanimous consent agreement. In order to get through with a proper amount of business in the Senate, there has developed a kind of senatorial courtesy to expedite the passage of bills. On Mondays under Rule VIII the Senate proceeds to the call of the calendar. By unanimous consent numerous bills are passed—amendments necessary to correct the defects of existing legislation, private bills and those relating to particular sections of the country. A single objection to any measure can prevent application of the rule.

Unanimous consent agreements are frequently used to fix an hour at which the Senate will vote on a pending proposal of great importance. There must be some definite expectations as to when action will be taken; Senators wish to be present to be recorded on the roll calls. There must, also, be safeguards against surprises; those having a particular bill in charge must not call for a vote when those who desire to speak are not present. These requirements can sometimes be met by informal announcement of the leaders' intentions and by notices that particular Senators desire to make speeches before a vote is taken. It is a familiar practice for unanimous consent agreements to be entered into that the Senate will vote on a certain day, or that after a certain day speeches will be limited. These usually suffice to secure action.

A typical unanimous consent agreement, entered into February 27, 1922, was as follows: "It is agreed by unanimous consent that at not later than 2 o'clock p. m., on the calendar day of Thursday, March 2, 1922, the Senate will proceed to vote, without further debate, upon any amendment or reservation that may be pending, any amendment or reservation that may be offered, and that after the hour of 5 o'clock on the calendar day of Wednesday, March 1, no Senator shall speak more than once or longer than thirty minutes upon any reservation that may be offered thereto."—*See 8, p. 323.*

Cloture in the British Parliament

In the House of Lords

By The Marquis of Huntly
For Thirty Years a Member of the House of Lords

UNDER the standing orders of the House any peer may rise in his place and move that the question be now put; that a peer rising to speak be heard in preference to the peer then addressing the House; and that any matter is not in order.

When either of these motions is made it is the duty of the Lord Chancellor (who acts solely as ex officio Chairman of the House) or of the Lord Chairman of Committees, when the House is in committee, to read it out and say, "Those who are in favor of the motion will say 'content,' the contrary, 'not content'." By the result of the division the House decides for or against the motion.

It will be seen therefore that the general sense of the House can be obtained and enforced by a majority of the peers present.

It is true that the power of moving as described is rarely exercised and probably the fact that such motion can be made has a deterrent effect upon prolixity of disorder.—*Extracts, see 11, p. 323.*

In the House of Commons

From Baumann's "Persons and Politics of the Transition"

During the eighteenth and the first half of the nineteenth century, the House of Commons was governed by custom and precedent, the "lex et consuetudo Parliamenti," which were left to the Speaker and the clerks at the table to announce. Speaker Onslow would tell Sir Robert Walpole or Mr. Pitt that the rule was so-and-so, and if the Chair was doubtful or disbelieved, an order would be made to search the Rolls of Parliament, on the Journals of the House to find a precedent. All this answered admirably so long as the House of Commons was what Professor Redlich calls "socially homogeneous," i. e., composed of English gentlemen of similar habits and education, not too much in earnest, who recognized the Standing Orders as the rules according to which a pleasant and exciting game was to be played. The first transference of power from the upper to the middle class took place in 1832, and almost immediately a change was felt. But the spirit of Eton and Oxford survived the first

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The House Rule on Limitation of Debate

RULE XVII

Previous Question

CLAUSE 1—There shall be a motion for the previous question, which, being ordered by a majority of Members voting, if a quorum be present, shall have the effect to cut off all debate and bring the House to a direct vote upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill to its passage or rejection. It shall be in order, pending the motion for, or after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a standing or select committee.

EXPLANATORY NOTE

(Note with references to Hind's Precedents of the House of Representatives.)

Effect of Previous Question on Debate

The House adopted a rule for the previous question in 1789, but it was not turned into an instrument for closing debate until 1811. At various times it has been perfected by amendments shown by experience to be necessary (V, 5443-5445).

The previous question is the only motion used for closing debate in the House itself (V, 5456). It is not in order in Committee of the Whole (IV, 4716). The motion may not include a provision that it shall take effect at a certain time (V, 5457). Forty minutes of debate are allowed whenever the previous question is ordered on a proposition on which there has been no debate (V, 6821; see Rule XXVII); but if there has been debate, even though brief, before the ordering of the previous question, the forty minutes are not allowed (V, 5499-5501). This preliminary debate should be on the merits of the question if the forty minutes of debate are to be denied for reason of it (V, 5502). The forty minutes should be demanded before division has begun on the main question (V, 5496). It may not be demanded on incidental motions, but is confined to the main question (V, 5497, 5498). It may not be demanded on a proposition which has been debated in Committee of the Whole (V, 5505), or on a conference report if the subject-matter of the report was debated before being sent to conference (V, 5506, 5507). When the previous question is ordered merely on an amendment which has not been debated, the forty minutes are allowed (V, 5503); but the same liberty of debate is not allowed when the question covers both an undebated amendment and the original proposition (V, 5504). It was also denied on a resolution to correct an error in an enrolled bill (V, 5508). The forty minutes is divided, one half to those favoring and the other half to those opposing (V, 45495).

Relation of Previous Question to Failure of a Quorum

CLAUSE 2—A call of the House shall not be in order after the previous question is ordered, unless it shall appear upon actual count by the Speaker that a quorum is not present.

[This rule was adopted in 1860 (V, 5447).]

Questions of Order Pending the Motion for the Previous Question

CLAUSE 3—All incidental questions of order arising after a motion is made for the previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate.

[This rule was adopted in 1837 to prevent delay by debate on points of order after the demand for the previous question (V, 5448).

A question of privilege relating to the integrity of action of the House itself has been distinguished from ordinary questions of order and has been thrown open to debate after the ordering of the previous questions (V, 2532).]

Glossary of Parliamentary Terms

Closure or cloture, a term peculiar to Senate terminology, is practically synonymous with the previous question in the House, an instrument for closing debate and bringing a vote on the pending matter. The term had its genesis in the English Parliament. Its present meaning is altogether different from the original meaning. In our Continental Congress, and for some time in the early Congresses under the Constitution it was in the rules but rarely used. In the First Congress it was in the Senate rules but was later omitted.

The previous question as then understood was not used to prevent filibuster and to expedite business, but was used to prevent consideration of "questions of a delicate nature with respect to high personages." And a negative vote removed a question from consideration. Today, on the contrary, a negative vote on the previous question opens up the subject to still further debate and amendment.

The evolution of the previous question completely changed its original purpose until in the latter practice of our House of Representatives it became an instrument by which a majority of the House could reach a vote. This was not accomplished without many bitter fights. Always there was opposition to what the opponents of the previous question were pleased to call "gag laws," and the "dangers to the liberties of the people." But with the numerical growth of the House of Representatives it became impossible for that body to function and dispose of the enormous increase of proposed measures without some restraint upon debate. So, finally, and for some years past the House has operated, by the aid of the previous question rule, until little is heard nowadays about the "rights" of individuals or of the minority being seriously "restricted." But in the Senate all attempts to introduce closure, the same thing as the previous question, have been resisted.—*Wm. Tyler Page.*

Dilatory Motion—A motion made by a member of the minority which has the effect of delaying the consideration of a measure, such as motion to table, to amend, to appeal from the speakers' ruling to recommit, to reconsider certain paragraphs, etc. Before the invention of quorum—counting, the favorite dilatory motion was that of determining the presence of a quorum.—*Smith's Dictionary of American Politics.*

Filibuster is a name originally given to the buccaneers. The term is derived most probably from the Dutch "vry buiter"; German, "freibeuter"; English, "freebooter"; French, "flibusteer"; Spanish, "filibustero." The term "filibuster" was revived in America to designate those

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Should Debate in the Senate Be Further Limited?

Pro

HON. CHARLES G. DAWES.
The Vice-President of the United States.

SUPPOSE a body of men were gathered to discuss and act upon any matter of importance, either public or private, and one of them should rise and make the following statement: "Before we start I propose that in this meeting any one of us may talk as long as he pleases, whether relevant to the subject which we are considering or not. If anyone desires he may use up all the time we have at our disposal, even if he has the purpose of depriving us as a body of the right to act."

Of course such a statement would be regarded at first as an ill-timed joke, but when it was realized that the speaker was in earnest it would be greeted with scorn and derision as well as just resentment.

It is such a proposal which obtains in the Senate of the United States—alone of all the great deliberative bodies of the world. I maintain that the people of the United States, who favor and have established majority rule under constitutional limitations, understand and deeply resent this absurd situation; but in my judgment they do not visualize fully the great extent of its evil influence on both legislation passed and legislation defeated in this country.

All great parliamentary bodies of the world except the Senate, when, after discussion they desire to act, can close debate by a majority vote. This right thus to close debate is called majority cloture. Provision for this right, so guarded that every senator shall have the opportunity to be heard fully upon any question, but shall not be permitted frivolously or uselessly to prolong his speechmaking for the purpose of preventing action by the Senate pursuant to its constitutional duty, is the reform which is sought by the advocates of a change in the Senate rules.

Deferring for the moment explanatory and corroborating comment, I will state the principal objections to the Senate rules as they stand:

1. Under these rules individuals or minorities can at times block the majority in its constitutional duty and right of legislation. They are therefore enabled to demand from the majority modifications in legislation as the price which the majority must pay in order to proceed to the fulfillment of its constitutional duty.

The right of filibuster does not affect simply legislation defeated but, in much greater degree, legislation passed, continually weaving into our laws, which should be framed in the public interest alone, modifications dictated by personal and sectional interest as distinguished from the public interest.

2. The Senate is not and cannot be a properly deliberative body, giving due consideration to the passage of all laws, unless it allots its time for work according to the relative importance of its duties, as do all other great parliamentary bodies. It has, however, through the right of unlimited debate, surrendered to the whim and personal purposes of individuals and minorities its right to allot its own time. Only the establishment of majority

*See Congressional Digest, March, 1925, for the inaugural speech of the Vice President, which he devoted to the question of Senate cloture, and which provoked the current discussion of this subject.

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Con

HON. WILLIAM E. BORAH
U. S. Senator, Idaho, Republican

I HAVE always been opposed to cloture; and it has been extremely interesting in the years during which I have been in the Senate to observe how cloture has been sought to be applied by the two sides of the Chamber. When the Republicans are in the majority, they want cloture; when the Democrats are in the majority, they want cloture; and when either side is in the minority, it protests against cloture.—*Extracts, see 14, p. 323.*

HON. ROYAL S. COPELAND
U. S. Senator, New York, Democrat

JUST EXACTLY what the function of the Senate was to be was a matter of great concern to the Constitutional Convention of 1787. There is an anecdote about Washington and Franklin. They were out having tea together during the Convention. Social rules and table manners were not quite the same in those days as they are now.

As they visited together Franklin said to Washington: "What is the purpose of the Senate?" Washington retorted, by another question: "Doctor, why do you pour your tea in your saucer?" "Why," said the astonished Franklin, "to cool it." "Well," said Washington, "that is what the Senate is for."

The purpose of the Senate is entirely different from the purpose of the House of Representatives. From the very beginning it was intended to be a deliberative body where the expenditure of time and the exchange of views should determine judgment in any pending matter. The fact that this has been the rule has had a remarkable result as regards the constitutionality of the measures enacted into law. In the hundred and thirty-five years of our national history, only thirty-eight acts of Congress have been set aside.

It has been said that if you threw a bone of the Constitution into the Senate, the Senators would gnaw on it for ten days. They have done this to pretty good effect, however, because their cautions, deliberate and exasperating as they may seem, have resulted in the prevention of laws which under other circumstances would have gone into the scrap heap by way of the Supreme Court.

I can quite understand why a citizen of Nevada might want to have the rules changed. Nevada has seventy-seven thousand population, and yet it sends two members to the United States Senate. If New York were represented in the same proportion, it would have a hundred and forty-four members in the United States Senate, instead of two.

Here is another thing to think about: The States of New York, Pennsylvania, Illinois and Michigan pay sixty per cent of the Federal taxes. The combined representation of these States in the Senate is one-twelfth of the total. Therefore, the States are totally submerged so far as voting power is concerned.

New York State has as great a population as eighteen other States combined. It exceeds the combined population of Arizona, Colorado, Delaware, Florida, Idaho, Mon-

Continued on next page

Pro—continued

HON. CHARLES G. DAWES—continued

cloture will enable the Senate to make itself a properly deliberative body. This is impossible when it must sit idly by and see time needed for deliberation frittered away in frivolous and irrelevant talk, indulged in by individuals and minorities for ulterior purposes.

3. The rules subject the people of the United States to a governmental power in the hands of individuals and minorities never intended by the Constitution and subversive of majority rule under constitutional limitation. In the words of Senator Pepper, of Pennsylvania:

"The Senate, by sanctioning unlimited debate and by requiring a two-thirds vote to limit it, has in effect so amended the Constitution as to make it possible for a 33 per cent minority to block legislation."

4. The present rules put into the hands of individuals and minorities at times a power greater than the veto power given by the Constitution to the President of the United States, and enabled them to compel the President to call an extra session of Congress in order to keep the machinery of Government itself in functioning activity. The reserved power of the states in the Constitution does not include the power of one of the states to elect a senator who shall at times control a majority or even all the other states.

5. Multiplicity of laws is one of the admitted evils from which this country is suffering today. The present rules create multiplicity of laws.

6. The present rules are not only a departure from the principles of our constitutional government but from the rules of conduct consistent therewith which governed the United States Senate for the first seventeen years of its existence and which provided for majority cloture.

Because of the present size of the Senate, the immense population and diversified interests of our country, with the consequent enormous increase in the work of the Senate, its business cannot be properly transacted without a return to the majority cloture provided in its original rules.

7. As long as the right of unlimited, irrelevant and frivolous speechmaking exists, indulged in purposely to consume and waste the time of the Senate, that body never can be a dignified body. The men of ability in the Senate, who speak to the point to forward both elucidation and decision, as did senators of the past before the days of filibustering, are drowned out in the public mind by the interminable and irrelevant din raised by the obstructionists, who cannot be held either in time or to the point. The latter are giving the Senate its public character—not its most able, earnest and conscientious members.

The right of obstruction by minorities in the Senate, made possible by the rules, not only impresses personal interests upon public legislation but contributes to multiplicity of laws. The figures prove that any body which at times must grant concessions to individual members in order to secure the right to act as a whole will pass more laws in proportion than a body not under that handicap, as well as modify the bills passed in many instances in a way not in the public interest.

In the last five Congresses the Senate bills and resolutions passed by the Senate, with ninety-six members, exceeded by 182 the House bills and resolutions passed

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HON. ROYAL S. COPELAND—continued

tana, Nevada, New Hampshire, South Dakota, Utah, Vermont, Wyoming, Maine and Nebraska.

Add to these eighteen States seven other States—Arkansas, Louisiana, West Virginia, Washington, South Carolina, Maryland and Connecticut, and it will be found that these twenty-five States, controlling fifty of the ninety-six votes, have a majority vote in the Senate. These States represent less than twenty per cent of the total population of the country and they pay not more than ten per cent of the Federal taxes. Mr. Dawes' cloture rule would give this minority in population and financial standing absolute control of the Senate.

I am unwilling to have this done. Unlimited debate is the most tiresome thing in the world, both to the man who indulges in it and for those who have to listen to it, but I contend that the best interests of the country have been and will be served by this rule of procedure. The present cloture rule is effective. When it is necessary to stop debate it can be done under the existing rule. I can testify to this because of my own experience in connection with the Isle of Pines. A notice given by Senator Curtis and the presentation of the petition as required by Rule XXII demonstrated at once the futility of further effort to defeat action on this treaty.

The great trouble in the Senate lies in the fact that almost all the business is done by unanimous consent. This means that one Senator by his objection can prohibit the consideration of some measure no matter how important it may be. I had a bill in the last Congress which I brought up nine separate times, and it was put over each time by the objection of the same man, one Senator. I proposed in the 68th Congress and again in the 69th that this rule be changed, making it necessary for the objection to be supported by two other Senators. This simple change in the rules would revolutionize the work of the Senate.—*Extracts, see* 4 *page* 323.

HON. KENNETH D. McKELLAR
U. S. Senator, Tennessee, Democrat

I HAVE SERVED nearly six years in the House and more than eight years in the Senate. I am familiar with the rules of both bodies. I believe the present rules of the Senate make for greater efficiency, make for better legislation, make for the better carrying out of the people's will than do the rules of the House. In the House the previous question can be called for at any time, debate stopped and a vote had. In other words, the party in power can pass any measure without debate and without public scrutiny. It is well known that many bills are thus passed in the House. I do not believe that this unlimited right of cloture is best for the public weal. As a matter of fact, all of the legislation in the House is agreed upon by a few men occupying leading positions in the House and the great body of members is denied freedom of speech and action. All they can do is to get leave to print in the Record.

I say this not in criticism of the House or any of its members, for I have served in the House and enjoyed my service, and its membership is of the highest character and quality of statesmanship. But, when a bill gets to the Senate, the situation is entirely changed. No bill can get through the Senate until it has undergone a season

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HON. CHARLES G. DAWES—continued

by the House, with 435 members. The exact figures are 3113 for the Senate and 2931 for the House.

But more significant even than this, as evidence of the inevitable exactions of selfish human nature when given a chance, and the effect in forcing favorable reports on bills in committee, referred to by Senator Thomas, is the fact that the Senate, without majority cloture, passed these 3113 bills and resolutions out of a total of 29,332 introduced, while the House, with majority cloture, passed its smaller number of 2931 out of a total of 82,632 introduced.

During the last five Congresses, therefore, the Senate passed 10.5 per cent of the bills and resolutions introduced in the Senate, while the House of Representatives passed only 3.5 per cent of the bills and resolutions introduced in the House. In other words, of bills and resolutions introduced, the Senate, without effective cloture, passed in proportion three times as many as did the House of Representatives, with cloture.

As further proof, if any is necessary, that filibustering contributes to multiplicity of laws, it may be stated that it has caused the President to call, during the last eight sessions of Congress, seven extra sessions. No one can contend that more laws were not passed in the twenty-three sessions actually held than if only the sixteen regular sessions had been held. As a matter of fact, in these extra sessions a total of 386 laws and 98 public resolutions were passed. Again, as a result of filibustering, not only more laws are passed but the laws which are passed often do not receive due consideration.

Because of the consumption of time which the Senate has for constructive legislation by efforts of the minority through frivolous and unlimited oratory to obstruct the majority, it becomes necessary that there be occasional outbursts of speed by the Senate in passing bills on the calendar and jamming through appropriation bills. These outbursts of speed are a dangerous reaction from the cumulative inaction preceding them. Individual senators have bills on the calendar in which they are interested, as well as items in appropriation bills. The forces of normal action being held in check by obstruction, the reaction comes with a rush which renders impossible due and wise consideration. To pass bills in less time than it takes to read them, especially in the case of appropriation bills carrying hundreds of millions of dollars, after spending days on a revenue bill or tariff bill, demonstrates the necessity of so omending the rules of the Senate as to bring about a proper allocation of time to the consideration of all its business.

To reestablish the majority cloture provided for in the rules of the Senate during the first seventeen years of its existence, and thus check the intolerable evils which have arisen because of its absence, would be a return to the first principles of the American Government and of American institutions, and not a departure from them.

The Vice President is designated by the Constitution as the presiding officer of the Senate, and, like all other presiding officers, is charged with expediting the business of the body over which he presides. Being the only official of the Government sustaining a constitutional relation to the Senate as a whole—elected not by the Senate but by the people of the United States—and charged with

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Con—continued

HON. KENNETH D. McKELLAR—continued

in the limelight. Any one of the ninety-six Senators can speak on it, hold it up to the public gaze, dissect it and scrutinize it. If it is a bad bill, the public knows it. It cannot be put through in star chamber proceedings. Secrecy is not the rule in the Senate, not even in executive session. Nor can one man hold up indefinitely, as has been erroneously stated.

Of course, no one can make a statement of that kind who is familiar with the rules of the Senate. The present rules provide that sixteen Senators can bring a measure to a vote at any time they petition the Vice President to that end. A vote can be had the next day and debate can be limited at the same time.

In addition to its duties as a part of the lawmaking branch of the Government, the Senate also has two other most important functions under the Constitution. The first is, it, with the President, must enact all treaties with foreign nations. The second, it must approve all of the countless thousands of important appointments to office made by the President. These two functions alone are enough to keep the Senate busy, but when, besides these, it passed many more bills than the House, which does not possess these additional functions, its efficiency is not subject to just criticism.

In view of Vice President Dawes' recent statement that the rules of the Senate were antiquated, that the Senate does not efficiently transact its business, that the rules should be changed like those of the House so that the business of the Government might be efficiently transacted, before leaving Washington I had an expert examine the records for the past five Congresses—ten years—to see what business the records show the Senate had done and what business the House had done. I present the facts, which are as follows:

	64th Cong.	65th Cong.	66th Cong.	67th Cong.	68th Cong.
Senate bills introduced	8,334	5,680	5,052	4,658	4,410
Senate joint resolutions introduced	221	230	254	290	193
Total	8,555	5,910	5,316	4,948	4,603
Senate bills passed by Senate	591	464	437	568	713
Senate joint resolutions passed by Senate	60	65	56	85	74
Total	651	529	493	753	787
Senate bills enacted into law	234	152	181	289	378
Senate joint resolutions enacted into law	29	33	27	48	53
Total	263	185	208	337	431
House bills introduced	21,104	16,239	16,170	14,475	12,474
House joint resolutions introduced	393	445	481	466	385
Total	21,497	16,684	16,651	14,491	12,859
House bills passed by House	588	310	460	670	689
House joint resolutions passed by House	39	30	52	69	34
Total	627	340	512	739	723
House bills enacted into law	387	244	340	536	540
House joint resolutions enacted into law	34	23	46	58	25
Total	421	267	386	594	565

—*Extracts, see 4, p. 323.*

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HON. CHARLES G. DAWES—continued

concern for the proper conduct of the business of the Senate, in carrying the question to the people I am only performing a plain duty.

What I am advocating in connection with the rules of the Senate is that they should be changed by a provision for majority cloture so drawn that it will not prevent any senator from being fully heard upon any question, but will prevent a minority or an individual senator from unduly prolonging debate in order to destroy the constitutional right of a majority of the Senate to legislate. The adoption of the Underwood Resolution will properly and sufficiently remedy the situation, in my judgment.

No one has asked for a change in the rules which will prevent a minority from being fully heard on any question or interfere with the right of free speech. No one is asking any extension of the constitutional rights of the majority of the Senate or of the people themselves. The demand is only that the minority, protected as it is by the checks and balances of the Constitution, shall not exercise veto rights over the will of a majority when that majority desires only to exercise its constitutional rights of legislation.

This power of obstruction, resulting from the failure of the rules to provide for majority cloture, brings the Senate into disrepute, demoralizes its orderly procedure and interferes with its power to act properly under its constitutional authority in the interests of the people. It protects no essential right. It is wrong. It is un-American. —*Extracts, see 2, p. 323.*

• • • •

I maintain and shall maintain that the correct and comprehensive reform of the Senate Rules is that embodied in the Underwood Resolution.* But recent events in the Senate make opportune the discussion of some immediate forward step, desperately needed in the public interest, which may possibly invoke less determined opposition at present than does the proposition of full majority cloture.

I believe recent occurrences in the Senate have made clear to the public:

That if in the case of tax and appropriation bills alone, which are purely business measures, a majority cloture rule providing for ample opportunity for every Senator to be heard can be adopted it will prevent the holding up of appropriation and revenue bills by individuals and minorities seeking to coerce the majority into legislative concessions.

That such a rule will destroy the power of individuals and minorities in the short session to force the President of the United States, as has often happened in the past, to call extra sessions of Congress in order to secure the means to keep the machinery of the Government in functioning activity.

That in connection with the purely business measure of taxation and appropriation, in which the American people have the greatest interest, their interest will not then be subordinated to the right of minority senators to prolong talk unduly and frivolously.

We hear much said to the effect that the South will

*See Legislative History of Cloture Rules in Senate in this issue.

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HON. FURNIFOLD M. SIMMONS

U. S. Senator, North Carolina, Democrat

I HAVE never presented a cloture petition. I have presented a great many unanimous-consent requests, but I never have presented a cloture rule. We have had unanimous-consent agreements with reference to all sorts of bills, and under those agreements we have made arrangements with reference to the division of time and the amount of time and all that sort of thing, but that was a matter of agreement, that was a matter of unanimous consent, that was an agreement which was so adjusted and arranged that everybody was satisfied and everyone had all the time that he felt was necessary to enable him to discharge his duty to his constituents and to his country.

What does cloture mean as applied to a tariff bill? The cloture that is provided for in our rules, if it were applied to a bill carrying one general proposition like that of the soldiers' bonus, like that of a ship subsidy, I think would not be a very great hardship, because each Senator would have an hour to discuss the single proposition. But it is different when cloture is proposed to be applied to a tariff bill which carries 4,000 separate and distinct items, which already has had attached to it 2,000 amendments, a bill that probably might be subject to several hundred additional amendments. When you undertake to apply cloture, which limits discussion by each individual Senator on the bill and all amendments to only one hour in the aggregate, you have to my mind presented a proposition that is unthinkable and impossible and that can not be differentiated from a plain effort and purpose to gag Senators and to suppress real discussion.

If cloture prevails, Senators representing those who will have to pay the taxes imposed will have no opportunity to offer upon the floor of the Senate any amendment to correct the wrong. So we would have possibly between a thousand and fifteen hundred separate and independent taxes imposed upon the people of the country just as the committee had written those taxes and brought them in, without any discussion in the Senate body, without any opportunity to amend a single one of them. When before did it ever happen in a free country that it was proposed that men should have their property taxed, with a heavy taxation, too—not taxation for the benefit of the Government; no, but mostly for the benefit of private interests—and the only consideration that was to be given to that law by which their property was to be in large part confiscated for private interest was the consideration given to it in the committee, while the men whom the people had selected and sent here to guard and protect their interests were, by force of the majority, if the cloture prevailed, to be denied the poor privilege of uttering a word of protest or offering an amendment in behalf of their constituents and the taxpayers. I say, when we get to the point that it can happen in a free country that a man's property can be taken away from him and given to private interests without his representatives in the tax-levying body having an opportunity to be heard, either by way of discussion or amendment—when we come to that situation in the United States, I say that the liberties of the American people will be jeopardized unless in their might they rise up then in revolt against any such outrages upon their constitutional and inalienable rights as citizens of a free Nation.—*Extracts, see 14, p. 323.*

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HON. CHARLES G. DAWES—continued

never approve majority cloture because of a fear that a majority might sometime attempt to pass a bill like the old "Force Bill." But, will not the representatives of that section of our country whose industrial and business interests are having such a wonderful growth, and which is vitally concerned with the adoption of proper business rules for Senate procedure, agree at this time to support majority cloture to apply to revenue and appropriation bills only, thus giving the South in common with the balance of the United States the benefit which will result from the elimination of minority and individual obstruction in these purely business measures?

The country must realize by this time that without a majority cloture rule a minority of one-third has the power, whether they exercise it or not, to block a tax bill. It must realize that if minority obstructionists are determined enough and large enough in number that they can indefinitely delay a measure like tax reduction—that the majority of the Senate, unless it has the two-thirds majority which will enable them to invoke two-thirds cloture is practically powerless as long as the minority can physically hold out. Let us assume, however, that the tremendous public sentiment demanding tax reduction deters the obstructionists in the case of the present tax bill or enables a two-thirds majority to invoke the present cloture rule. Yet the country has come to better understand what a tremendous power minorities can wield in modifying for their own interest the course of general legislation when public sentiment does not happen to be aroused, and when a two-thirds majority for a measure does not exist.

Suppose, with the country demanding the immediate passage of a bill reducing taxes that the division of opinion in the Senate as to what items of taxation should be reduced was a narrow one, and the two-thirds vote closing debate could not be obtained; is there any doubt whatever that public sentiment would be solidly behind a majority cloture rule which would enable a majority of the Senate to do its constitutional duty and reduce taxation? How long under such a situation would arguments stand to the effect that the right of unlimited talk by minorities should be regarded as more important than the right of the American people to have the majority of the Senate perform its constitutional duty?

When individuals and minorities in the Senate possess power under Senate Rules to render impotent at times the Government itself these rules should be revised in the interest of constitutional majority rights and the rights of the American people.—*Extracts, see 3, p. 323.*

HON. OSCAR W. UNDERWOOD
U. S. Senator, Alabama, Democrat

THERE is an old saying that there is nothing new under the sun. That is pretty nearly true of modern parliamentary bodies. Their procedure, in the last analysis, has grown up to fit conditions and was not adopted until conditions justified it.

Vice-President Dawes, in his inaugural address to the United States Senate rather startled the country with his declaration in favor of a closure rule for the Senate. It was not his advocacy of a closure rule that startled so much as it was the fact that, for the first time in the

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HON. FURNIFOLD M. SIMMONS—continued

I am utterly opposed to Mr. Dawes's views on this subject. After twenty-four years in the Senate, I am satisfied that the rules which prevent arbitrary cloture of debate have been a great protection against ill-advised legislation and have brought about that thoroughness of discussion which is impossible under the rules of procedure obtaining in the House of Representatives. Under the present rules of the Senate two-thirds of the Senate can at any time restrict debate within reasonable limits. When Mr. Dawes becomes familiar with the rules of the Senate I think he will become less radical in his views.—*Extracts, see 14, p. 323.*

HON. GEORGE W. NORRIS
U. S. Senator, Nebraska, Republican

THE Vice-President has very clearly shown that a change in legislative procedure is necessary if the people are to receive the benefits of necessary progressive legislation. He has, however, told nothing new. These same things have been repeatedly called to the attention of the people by others in more obscure positions, and various remedies have been frequently suggested. But though Mr. Dawes has very clearly pointed out the evil the remedy he suggests would bring more harm than good. He jumps right out of the frying pan into the fire.

Mr. Dawes compares the legislative procedure of the Senate with that of the House of Representatives. He labors at some length to show that the procedure is the House, where they have cloture, is much superior to that in the Senate, where they do not have cloture. If this comparison demonstrates anything, it shows that the House has ceased to be a deliberative body. Every student of our Government knows that the laws of our country are analyzed and discussed and, in fact, made by the debate that takes place in the Senate.

In the House debate is curtailed, often entirely eliminated, amendments are limited and sometimes absolutely prohibited—and this is majority cloture in the House, which the Vice-President approves and which he wants the Senate to adopt.

The country pays but little attention to legislation pending in the House. Everybody knows that this limited consideration on the part of the House means imperfect, half-baked legislation. Everybody knows that when the bill gets to the Senate it will be completely analyzed and debated, that amendments can be offered without limit and that in the end, whether the legislation be good or bad, it will at least represent the judgment of the legislative body acting upon it. It even happens not infrequently that Members of the House are induced to vote for a special rule and to support this majority cloture on the theory and with the knowledge that when the bill gets to the Senate it will be considered on its merits.

The Senate is the only forum in our country where there is free and fair debate upon proposed legislation, and it is the forum where the legislation of the country is made. If we adopted majority cloture in the Senate as they have in the House, the last vestige of fair and honest parliamentary consideration would entirely vanish.

The evil in the Senate procedure, so well pointed out by the Vice-President, is the ability of filibuster, which comes about on account of the rule which permits

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HON. OSCAR W. UNDERWOOD—continued

memory of man, the Vice-President had the temerity to tell the Senate how to run its business. This came rather as a shock to the Senate. But so far as his declaration in favor of a rule that would allow the majority to transact business in the Senate is concerned, I feel quite sure that what he said meets with the approval of the country at large.

Since the dawn of civilization men and women have held meetings in efforts to direct, induce, or carry on government. Sometimes these meetings have taken the form of a gathering in the forum of the citizenship of the body politic, and sometimes it would be representatives of the people who would authorize by direct practice or precedent the constitutional regulations to make laws. It was long ago discovered that these meetings, whether in the forum or in legislative halls, required some rule of procedure in order that business could be conducted in an orderly manner and so that the vote of the assembly might not be converted into the voice of a mob.

Hence the rules of procedure in the parliamentary bodies of civilized nations have been more or less uniform and have been consolidated into what is known as general parliamentary law. There must be a presiding officer. The date of meeting must be fixed. The number of votes to constitute a quorum must be determined. The right of recognition must be regulated, and so on down the scale. The rules of parliamentary law are merely adopted for order and to allow a representative body to transact business in an orderly way.

General parliamentary law for more than a century has recognized the right of the majority, in one way or another, by a vote of the majority of those assembled, to have the right to close debate so that a vote might come on the question under discussion.

The question before the country, then, is whether it is the part of wisdom and good government for the United States Senate to refrain from falling into the pathway of precedent and accepting the rule that is universally called parliamentary law and allowing the majority to close debate when they so desire and pass upon the issues before them, or whether it is the part of wisdom to continue to drift as we have for the last hundred years and allow a minority to stifle legislation whenever it determines to do so.

With few exceptions, the rules now used in the United States Senate are those that were adopted when the First Congress was organized. It must be borne in mind that at that time only eleven States had ratified the Constitution and the Senate consisted of twenty-six men—not many more than a large board of directors.

It is perfectly apparent that the mode and manner of conducting business by twenty-six men might be vastly different from the procedure of ninty-six men—the present membership of the Senate. It is also evident that where twenty-six or thirty men could transact business in an orderly way without stringent rules, ninety-six men must have more or less strict regulations for their mode of procedure if they intend to allow the will of the majority to rule.

In other words, whether the rules in a parliamentary body will be effective is largely determined by the membership of that body. An organization constituted of twenty-six men could probably work effectively without

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HON. GEORGE W. NORRIS—continued

unlimited debate. The filibuster is an extraordinary procedure. It is illogical and conditions should be so changed that it will not be used or attempted. A study of the procedure of the Senate will demonstrate that the filibuster always takes place in what is known as the short session of Congress. Every other session of Congress must end on the 4th day of March because of the expiration of the terms of Members of the House of Representatives and one-third of the Senate. It is known throughout that session that on the 4th of March, when the gavel falls, everything on the calendar not enacted into law fails and dies. No filibuster can be successfully carried on unless the adjournment of the Congress is definitely fixed. Filibusters therefore take place in this short session. A cloture would not end the filibuster unless it absolutely prevented debate and the offering of amendments. A cloture which permitted reasonable debate after its adoption would not prevent filibusters if they were attempted just before the final adjournment.

Mr. Dawes has not given us a concrete rule that will work, and I defy him and challenge him or anyone else to put in writing a rule that will prevent a filibuster when the final adjournment is definitely fixed by law. If a filibuster were commenced, let us say, on the 15th day of February, it would be more difficult to keep it up and succeed than it would be were the filibuster commenced on the last day of February, shortly before the final adjournment. A filibuster commenced thus early would require quite a number of Senators successfully to carry it out; but a filibuster can be commenced at 11 o'clock on the 4th day of March, and carried to a successful conclusion by one man, if he is allowed any debate whatever. A filibuster commenced on the 1st day of March would be comparatively easy if one or two men would devote their time to it; so when Mr. Dawes says he is not advocating a rule that would end all debate he is simply giving away the entire question. A rule that will prevent filibuster must be so drastic that no debate whatever can take place after the rule is put in force.

It is conceded that a filibuster carried on for any considerable length of time prevents the conclusion of other legislation and often defeats entirely the passage of laws beneficial to the entire country. This is one of the secondary effects of the filibuster, and is one of the things that those who engage in the filibuster must consider and for which they must assume responsibility.

It is quite apparent, therefore, that the adoption of cloture will not bring a remedy. It must likewise be apparent that all these filibusters take place in the short session—that they would not be possible if it were not for this limitation. Neither would such filibusters be possible if the new Congress instead of the old were legislating during the short session. However, under our Constitution, although defeated at the polls, continues to legislate until the 4th day of March, while the new Congress, anxious to perform the duties imposed upon it by the people, must stand helpless and unable to function in the performance of the duties for which it has been elected.

The remedy, therefore, is to abolish the short session of the Congress—to install in office the men who have been elected fresh from the people, and let them legislate in accordance with the questions settled in the preceding

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HON. OSCAR W. UNDERWOOD—continued

any rules after the appointment of a presiding officer. But a body composed of a thousand men would be compelled to have very stringent rules and limitations on debate that would necessarily cut off a large portion of the membership from participating if they intended to accomplish results.

No man can successfully deny that the present Senate rules are ineffective for transacting business in an orderly way.

It is true that this statement might be combated by an examination of the calendar of the last Senate and its evidence of the number of bills that were passed. But as a matter of fact the larger portion of the time of the last Senate was taken up with consideration of one measure. Other bills that were allowed to go through had only a cursory examination, while many of them were passed by unanimous consent without any consideration at all.

Why did this happen? Because a filibuster was being conducted against one bill.

Again you might from the Senate record refute this statement. The opposition might point out that the only debate that was conducted was legitimate debate and that the transaction of other business intervened. Such a statement probably would be accepted as true by the uninitiated. But to say that a bill of no greater importance than the Muscle Shoals bill required the almost undivided attention of the United States Senate from the first of December to the last of January for legitimate debate will hardly be accepted by those who understand the problems that confront the country.

To conduct a filibuster it is not necessary to talk all the time against the bill that it is desired to defeat. There are hundreds of ways to bring up other matters, and the skillful filibusterer who understands the game can often accomplish his result by laying across the path of a bill he desires to defeat other measures that he can induce debate upon by indirection.

That bills are defeated by talk and delay on account of the failure of the Senate to have an effective closure rule cannot be denied. It is demonstrated in every session of Congress. All one has to do to be sure of what actually happens is to look at the wrecks strewn along the legislative shores—wrecks of eight or nine important measures in which the country or a portion of the country was interested during the last Congress.

We come back to the real question as to whether we should have a closure rule for the Senate or not—a rule to close debate such as is usually called in parliamentary law "the previous question."

The Constitution of the United States contemplates that a majority of the United States Senate shall transact business. They are entitled to do so under the Constitution. But when the rules of the Senate permit a small minority to occupy so much time in the debate on any question that such a minority can force concessions from an unwilling majority in order that legislation may be achieved, the constitutional requirement that a majority may transact business undoubtedly is nullified.

I do not think there is any man who really understands the Constitution who can deny the fact that a minority can nullify the rights of the majority in the United States Senate.

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HON. GEORGE W. NORRIS—continued

campaign. It is important that those who have been defeated should not be continued in office after their defeat. To bring about this remedy will require a constitutional amendment. The effect of this amendment would be to give us one session of Congress each year which would be unlimited as to time, except so far as the term itself might limit it—which in practical effect means no limitation whatever. Men whose official acts had been repudiated by their people would suffer the results of such defeat and repudiation, and we would not find the country in the disagreeable attitude of seeing those whom the people have defeated placed in higher positions of power and honor for the very reason that they have been unfaithful to their trusts. The filibuster would disappear as the dew fades before the morning sun. No filibuster would be possible and therefore no filibuster would be attempted. If a cloture were necessary at all, a cloture similar to the one we now have in the Senate would meet all requirements.—*Extracts, see 15, p. 323.*

HON. SMITH W. BROOKHART
U. S. Senator, Iowa, Republican

THE SENATE RULE of unlimited debate makes the United States Senate the one great open legislative forum in all the world.

The rule sometimes delays good legislation, but never kills it. Good legislation always comes back, and finally wins. The rule kills a great deal of bad legislation. That class of legislation which cannot stand the light of publicity will always be killed by unlimited debate.

The filibuster succeeds only at the end of the session or in the short session, and only against bad legislation. It cannot succeed against legislation that has merit, although it may postpone it to another session. I am informed that the Senate transacts more business with this rule of debate than the House does with its cloture rule, and that this is true in the whole history of the two houses.

Rule XXII is the bulwark of free speech under the Constitution of the United States and I think there will be few Senators who favor the change. I can understand how Wall Street financial power would want to abolish this rule, but the American people, when they understand the facts, will sustain the rule.—*Extracts see 4, p. 323.*

HON. EARLE B. MAYFIELD
U. S. Senator, Texas, Democrat

I DO NOT understand that our Vice President has submitted a concrete, definite proposition as to how the rules of the Senate should be amended. So far he has only dealt in glittering generalities, claiming that one Senator can obstruct the business of the Senate by filibuster, and that ought not to be possible.

I will admit that it is possible for one Senator or a small number of Senators to obstruct legislation by filibuster when the Senate is about to adjourn sine die, but it is unfair to create the impression that the general business of the Senate can be obstructed by one Senator, because that is not true.

It might be all right to amend the rules of the Senate so as to limit debate, say ten days before the session of

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HON. OSCAR W. UNDERWOOD—continued

Of course, those who oppose the closure rule contend that great benefits have accrued to the people of the United States by reason of the fact that they could prevent vicious legislation proposed by the majority. I do not deny that vicious legislation sometimes is proposed by the majority, and sometimes is enacted. But that is the penalty we pay for our system of government.

I do not think that we stand in more danger from vicious legislation than we do from the destruction of necessary and progressive legislation that is defeated by the determined opposition of a few men who constitute only a minority of the membership of the Senate.

Compare the two bodies of Congress. The House of Representatives has had a drastic closure rule for many years. The Senate has had none.

Do the American people regard the operation of the House of Representatives under its rules as a danger to the body politic? If not, why should not those same rules apply to the Senate?—*Extracts, see 6, p. 323.*

HON. ARTHUR CAPPER
U. S. Senator, Kansas, Republican

I AM IN SYMPATHY with Vice President Dawes' declaration that the rules of Senate procedure are due for an overhauling. The country is 'fed up' on the spectacle of a single, or at most, a small group of Senators rendering the legislative machine impotent by the tactics of the filibuster. This is nothing more nor less than putting the Nation's affairs as they are vitally and intimately affected by legislative processes at the mercy of what in effect is a one-man veto power. This veto is not infrequently more far-reaching than that vested in the President. The President can only veto acts of Congress after their passage. The Senatorial filibuster veto can and does prevent necessary legislation from consideration and vote.

Such an exercise of negative power is not contemplated in the powers vested in the Senate by the Constitution. Indeed, such power to hamstring legislation is entirely repugnant to our system of representative government. Congress is the forum in which the country, through its representatives, voices and puts into effect its will in respect to affairs affecting the public welfare and prosperity.

It is a gross perversion of this function that a single member or a small group of members should arrogate power literally to strangle legislation and to prevent the consideration of business that it is the province of the legislature to perform. Yet such is the practical effect of Senate Rule XXII—a relic of antiquity that is outworn and entirely out of harmony with the complex demands of present-day legislation.

This abuse of power—for it is nothing short of that—has resulted in a state of affairs that too often makes it practically impossible for a short session of Congress to enact any except the appropriation legislation necessary to keep the various activities of the Government in operation. In the last session, the defeat of any such supply measure by filibuster would have forced an extra session of Congress. That would have been an invasion of the powers of the Executive. Under the Constitution, the President has sole discretion to assemble Congress in extra session.

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HON. EARLE B. MAYFIELD—continued

the Senate is to be concluded, but I would not favor amending the rules of the Senate so as to limit general discussion of legislation.

Under Rule XXII, debate in the Senate can practically be terminated if two-thirds of the Senators favor the proposition, and if the rules were amended as I have above suggested, no measure could be talked to death by one Senator, or even by a group of Senators.

With reference to filibuster, permit me to say that I doubt if any real constructive legislation was ever killed in the Senate by that means. Meritorious legislation may be delayed by extended debate, but it cannot be killed in the Senate by filibuster.

I would never support any amendment to the Senate rules that would result in gag rule, which no doubt the special interests of the country would like to see adopted. Greater harm is likely to come to our country through half-baked, ill-digested legislation than by the delay of meritorious legislation as the result of general debate. When a general measure has run the gauntlet of the United States Senate, you can conclude, as a rule, that it has been well considered and analyzed, and in my opinion it would be a mistake to destroy the only legislative tribunal in the world where freedom of speech is untrampled. Most of the rules of the Senate were written by such statesmen as John Quincy Adams, Daniel Webster, Henry Clay, John C. Calhoun, and men of like character and ability, some of whom served in the Senate for over a quarter of a century. Our country has grown and prospered and developed under these rules, and I seriously doubt if we of this day and generation can improve them.—*Extracts, see 4, p. 323.*

HON. JOHN T. MORGAN
Former U. S. Senator, Alabama

THERE are Senators who have been a long time in that body and who have respect for its rules and its practices and its traditions, because those practices and traditions have given to the country an assurance of conservative action upon any matter of legislation that might come before this body. The Senate rules have been very liberal, doubtless owing to the fact that Senators, while equal in their representative capacity and power in voting, nevertheless represent States of the American Union. So that men who represent such large constituencies are supposed to have a right to freedom of debate that perhaps would not apply with so great force at least to those who represent smaller constituencies in the other House of Congress.

The Senate has found also that by a liberal exercise of the powers of majorities the business of the Senate has very largely outstripped, if I may use that expression, the business in the corresponding and much larger body of the House of Representatives, so that the dockets have always kept ahead of the dockets of the other House very largely, not only in the number of measures that have passed, but also in respect of the importance of those measures. What the Senate has been doing in this particular has worked out a very great advantage to the country. I am in favor of maintaining the ancient landmarks, the old situation which originated with this Government at the laying of its foundations and has

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HON. ARTHUR CAPPER—continued

This power to stifle legislation, as I have said, is not a power granted the Senate by the Constitution. It is a power the Senate has assumed in framing its rules of procedure.

Such practices not only palsy legislation, but they are a menace to majority government. It is upon this primary principle that our entire system of government is based. By their votes in the elections, the people indicate the policies that meet their approval. This is a mandate to the agencies of government to put the popular decision into effect. If a small minority in one branch of the National Legislature may delay the consideration of business and halt the processes of legislation, that dilatory power becomes an agency for the defeat of the public will. As Lincoln said in his first inaugural: "If the minority will not acquiesce, the majority must—or the Government must cease."

In correcting this manifest abuse it is not necessary to abridge a single power vested in Congress by the Constitution; nor is it necessary to invade in any degree the proper rights of minorities. It was intended that public business should be openly transacted and that decisions should be arrived at only after amplest discussion. It is by no means necessary to establish "gag" rule to abolish the rule that allows filibuster ambuscades. On the contrary, to knock out the filibuster is to facilitate both discussion and decision.

In focusing public attention on the need for a revision of the Senate's procedures, the Vice President is voicing the opinion of many Senators and a public conviction that legislative processes should be liberalized where necessary to facilitate the public business. In the next session the Senate should give early consideration to this necessary business of setting its house in order.—*Extracts, see 4, p. 323.*

HON. ROBERT L. OWEN

Former Senator, Oklahoma, Democrat

NO one man, no matter how sincere he may be or how patriotic his purpose, should be permitted to take the floor of the Senate and keep the floor against the will of every man in the Senate except himself, and coerce and intimidate the Senate. To do so is to destroy the most important principle of self-government—the right of majority rule.

Under the system that we have of party government, where the members of each party line up with complete solidarity on either side of the aisle—I may say with complete solidarity, because the exception is very rare—where that is the case, and where there is a conference or caucus on both sides, it comes down to a question of party government; and party government must be controlled by a majority of the members of the party. The party then becomes jointly responsible throughout the Nation for the action of the party in the Senate and House of Representatives.

I think this practice of the Senate in having no cloture, in having no time fixed for voting, has destroyed debate in the Senate and has driven the debate into a conference room, where colleagues can get together and express their minds and hearts to each other and arrive at some measure of solidarity. That is my opinion about it. I

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HON. JOHN T. MORGAN—continued

kept along with it in its history all the time, and out of which great benefit has come to the people of the United States.

In the future this will be more needed than it has ever been in the past. As the Senate increases in size and as the States increase in number, it is all the more important that every one of the vastly diversified interests of the people of the United States in these respective local sovereignties should have a free and full expression upon the floor of the Senate.—*Extracts, see 12, p. 323.*

HON. JOHN G. CARLISLE

Former U. S. Senator, Kentucky

I UNDERTAKE to say that it is the common law of English-speaking people all over the world that every proposition properly presented for the consideration of a legislative body is debatable unless that legislative body has voluntarily made a rule to the contrary. Universal freedom of speech among the people and perfect freedom of debate among their representatives is the common and unwritten law of the race to which we belong. These legislative assemblies are simply the representatives of the people and as a matter of fundamental rule or principle it might just as well be contended that the people themselves have no right to discuss a question presented for their decision as to contend that their representatives have no right to discuss the questions presented to them for their consideration.

Whenever the English-speaking people have established a legislative assembly—and they have established these representative assemblies wherever they have settled and established governments—this universal rule has been recognized, and there is no case under parliamentary law where a conventional rule has not been adopted in which the question is not debatable. The motion to adjourn, to lay on the table, and even the motion for the previous question itself were debatable by the common parliamentary law. The Senate in revising its code of rules has recognized this principle, this rule of parliamentary law, as fundamental, and wherever it desired to limit debate or to prohibit debate it has so said in express terms in its rules.

Whoever attempts to abridge debate in an American legislative assembly or to destroy the freedom of speech among American people must show a warrant for his action. I insist that there is but one single class of appeals provided for in the rules of the Senate which is not debatable, and that is the case where what is called subsequent question of order arises. Where one question of order has arisen and been decided and there is an appeal from it, and pending that appeal another question of order arises and an appeal is taken from that, the second appeal is not debatable because the rules of the Senate say so, and for no other reason.

No presiding officer who has ever sat in either the House of Representatives of the Senate has undertaken to deny the right of debate or to abridge that right to any extent whatever except in strict accordance with the existing rules of the body over which he presides, and I do not believe that any one ever will do so.

It has been said that the so-called cloture resolution was a matter of privilege, and it may be that we are

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HON. ROBERT L. OWEN—continued

concede to each Senator his right to do as he sees fit about it, but I do not find it against my own conscience or my own free will to yield something in my judgment to my party associates. I am glad to do that, because they yield something to me also.

It is a question of mutual compromise between men who are affiliated together upon a party basis for the public good, and they go to the country upon party performance or party neglect or party success in legislation or party defeat in legislation. I am not willing to defeat the party that put me in power and turn upon them and rend them to pieces. I am not willing to disorganize my party and cooperate with Republicans to defeat my party because the majority of my party colleagues do not submit to dictation from me. I wish to cooperate with my party associates and help them when I can. I certainly would not wish to destroy them. I would prefer to be silent if I can not agree with them and merely give the reasons why I can not go with them.

If we had a cloture we would restore debate in the Senate Chamber, and I would then be glad to listen to debate from Members across the aisle and learn from them, and I would accept from them any proposal that I thought for the common good. In writing the Federal reserve act and taking a part in it many things were proposed by the Republicans which I gladly accepted, as far as I was concerned; and I gave them open credit for it, too.

If this body consisted of men chosen upon an open ballot from Nebraska and Missouri and Oklahoma without any party designation, then the caucus would be held on this floor. As it is, the power is intrusted to a party, and in order to have party action the members of it have got to consult among themselves and determine the party action.

It is claimed on behalf of the minority that it is exercising the right of debate and merely asserting the time-honored privileges of the Senate. In truth, it is preventing reasonable debate, and the privileges to which it refers ought to be protected from abuse, as they have been by other legislative bodies. The British House of Commons, the mother of parliaments, exceedingly jealous of every real right and privilege, throttles those who would throttle it.—*Extracts, see 13, p. 323.*

HON. IRVINE L. LENROOT

U. S. Senator, Wisconsin, Republican

SENATORS have the right to filibuster—to filibuster a bill to death—and they have the power to do so under the present rules of the Senate; but the majority has a responsibility, and the country, I think, well understands that under the rules of the Senate, as they are now framed, the majority party may solemnly promise to the country legislation which the country expects. But under the present rules there is always a reservation that "we promise you this legislation provided the minority party will consent to it, but if there be objection upon the part of the minority we will not carry out our promise." The Senate has the power to modify its rules so that the majority can do business. It is the duty of the majority so to amend the rules of the Senate that when debate is

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HON. JOHN G. CARLISLE—continued

upon the threshold of a great parliamentary contest. If so, I still have faith that the laws and traditions of legislative assemblies in this free country will continue to be respected everywhere, not only in the chair, but on the floor. The utmost extent to which any presiding officer has ever gone even in the consideration of matters of the highest privilege was to hold that dilatory and obstructive motions would not be entertained; not that the freedom of debate should be destroyed or abridged; not that the representatives of the people should be denied the right to be heard upon the propositions which they were to vote, but simply that in consideration of these matters of high privilege the time of the assembly should not be wasted by motions made for the mere purpose of delay and obstruction.

Beyond that no presiding officer has ever yet gone. Beyond that no legislative body sitting in this Capitol at least has ever authorized them to go. When it was sought to abridge or to suppress debate in the British House of Commons the power was not given to the speaker absolutely to do it from the chair, but he was authorized simply to formulate and lay before that body a set of rules which would enable the body to do it for itself. *Extracts, see 12, p. 323.*

HON. JAMES A. FREAR

U. S. Representative, Wisconsin, Republican

I DO not assume to discuss Senate rules, but while the Vice-President was lecturing the Senate on Inauguration Day on its rules, the question occurred to me what would he say of the recent House rules that are threatened with reenactment according to numerous semi-official pronouncements.

The House passed the 1921 Revenue Bill of many hundreds of items under a rule that did not permit a single amendment to be offered to the committee bill that would collect $3,500,000,000 annually in taxes and other revenues. So, too, with the Fordney Tariff Bill, where only five amendments were permitted to be offered in the House to a committee bill of a thousand items and more. No other legislative body in the world presumably ever submitted to such a humiliating spectacle. With two bills affecting every family in the land, four hundred and thirty-five Members permitted a majority of a committee to prepare and pass the bills practically without change, and that is the way the House legislated.

The Senate under its legislative rules added several hundred amendments to both bills and a majority of the amendments were accepted by the conferees and adopted by Congress in both the revenue and tariff laws as passed. These were the two most important measures passed by the 67th Congress. When the House rules were liberalized after a vigorous fight last session, a storm of abuse arose against any "insurgency" that opposed gag rule or asked for right to amend committee bills. The revenue bill of 1923 as passed by the House under the liberalized rules was accepted with slight change by the Senate and is substantially the law today. In other words the House resumed its constitutional prerogatives, for under the Constitution the House must initiate all revenue legislation, yet under the former House rules a carefully selected committee reported the revenue bill or tariff bill to be

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HON. IRVINE L. LENROOT—continued

abused, whether it be upon one side or upon the other, when Senators occupy hours and days in the discussion of extraneous matters, there shall be a power in the majority, whether that majority be on this side of the aisle or on the other side to carry out its promises to the people and enact the legislation which it has promised to enact.

I would have a rule or an agreement that at least during certain hours of the day all debate should be confined to the bill under consideration, and that speeches upon amendments should be limited to 15 or 20 minutes. If that were done there would be some real consideration of the questions before the Senate and upon which Senators vote. There is none today.

What happens? An amendment is proposed; it is debated; half a dozen Senators listen to it, and not 10 per cent of the Senators who vote know the first thing about the subject they are voting upon.

I do not blame Senators for that. So long as it is understood that Senators must sit and listen by the hour to the discussion of every subject under the sun except the subject that is actually before the Senate, they can not be expected to sit in the Chamber when they have other and real work to do.

If there were a real limitation of 15 minutes upon amendments you would find the seats in the Senate Chamber full, and you would find Senators listening to the debates. It would compel each Senator, then instead of taking the time of the Senate upon little, inconsequental items, to so divide his time that he would devote it to items of importance, and it would compel him to confine his discussion and say as much as possible in the least possible time, instead of saying as little as possible in the greatest possible time.—*Extracts, see 14, p. 323.*

HON. CHARLES S. THOMAS

Former U. S. Senator, Colorado, Democrat

THE FUNDAMENTAL vice of the right of unlimited debate is the power with which it clothes every member of the Senate, a power that will inevitably be exercised and generally on critical occasions. The member who can prevent ultimate action in matters of legislation may dictate the terms if he pleases whereby he will abstain from doing so. And if that member's constituency is aware—as all of them are—that he has such power, he will be required to assert it for local benefits and private legislation which never could command favorable action on their merits. The practice necessarily grows by what it feeds on. Hence the countless amendments providing for special appropriations for persons and communities which disfigure practically all the general appropriation bills and which swell into the millions at every session. Hence the subordination of matters of national and even of international importance to those of domestic and sometimes of local or regional concern. It is by nomeans intended to convey the inference that all senators do this, but a considerable number of them do so largely because they do not care to offend powerful influences by refusing to emphasize the outstanding fact. This evil more than counterbalances all the virtues that can be imagined of such a code, and fully explains why it is retained with such tenacity and defended with such vigor.

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HON. JAMES A. FREAR—continued

passed without amendment and the Senate thereafter did the legislating. Opportunity for outside influences to control under the House gag rules was notorious. Constant threats to reenact the old House rules have been voiced.

If the old House rules are again to be adopted, as repeatedly urged by outside interests in an effort to carry out certain policies, then the only real legislative body will again be the Senate. Extremes either of gag rule or unlimited debate prevent deliberative legislation on the one hand and may be used to defeat needed action on the other, but where the Senate can bring about cloture at any time under its present rules, public attention should be directed to threats to reenact the old House gag rules with all the evils that accompany such methods. If the old rules are reenacted by the House next session, the next revenue bill, like the 1921 bill, will be written by the Senate and whatever is conceded by the House conferees unless cloture rules should be adopted also by the Senate. In that case a majority of both Houses by caucus action under a plea of party regularity might pass the House committee bill without a single amendment, and that would be a natural result with cloture in both House and Senate, if either party controlled both branches of Congress. Some people now urge that is the proper way to legislate, but it is not the method provided by the Constitution.—*Extracts, see 4, p. 323.*

NORMAN H. DAVIS

Assistant Secretary of the Treasury, 1919-1920
Under Secretary of State, 1920-1921

IT would be most illadvised to stifle debate in the Senate by the adoption of the cloture rules of the House. Those who advocate a measure on the ground that it would facilitate legislation and establish the rule of the majority seem to overlook the fact that a minority of Senators may represent States with a majority of the population of the United States, and that the Senators of the respective States were never intended to be the direct representatives of the people of the nation. We already have too much centralization of power.

Under the present rules of the Senate, a minority bloc may retard legislative action, but it cannot prevent it. Under the cloture rule, a still smaller bloc, dominating the so-called majority, could force legislation through without discussion. Instead of making our Senators rubber stamps, and increasing the facilities for passing ill-digested laws, the people should encourage the best-equipped citizens to serve them, and to pass fewer and better laws for the benefit of the people and the nation as a whole. *Extracts, see 4, p. 323.*

LINDSAY ROGERS

Associate Professor of Government, Columbia University

PROCEDURE in the Senate presents quite a different picture from the House. The upper house of the American Congress enjoys freedom of debate, or, as the critics would say, unrestrained garrulity. Almost alone among legislative assemblies of the world it refuses to limit discussion and apply closure its rules safeguard a free and equal right of amendment. Excessive loquacity as the weapon of a minority can, on occasion, be more

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HON. CHARLES S. THOMAS—continued

Multiplicity of Federal statutes is largely the result of favorable committee action upon needless or questionable bills, and committee action is in turn largely influenced by senatorial courtesy, which is a polite name for individual senatorial power.

This power is, of course, derived from the rules, whose practical effect is to require unanimous consent for the enactment and sometimes for the consideration of measures and especially those of importance. A member introducing a bill which is referred to the appropriate committee will be on that or if not on two or three other committees which in turn will have custody of other bills, in which members of the committee in charge of his bill may be interested.

The rejection of his bill may provoke retaliation which will readily manifest itself on the floor when the measures of members of the committee pigeonholing other bills are taken or attempted to be taken from the calendar. I have known such instances to occur on more than one occasion. They are sufficiently frequent to warn senators that favorable reports on many bills backed by strong personal interests may be essential to the enactment of others of greater and more general importance.

This condition congests the calendar and powerfully promotes the cause of private legislation. It is within bounds to assert that more than half the bills reported to the Senate calendar during the past decade are private or specific in their character, and the number is constantly increasing.—*Extracts, see 2, p. 323.*

HON. WILLIAM J. STONE*

Former Senator from Missouri, Democrat

I DESIRE to address myself briefly to the sole question of so changing the rules of the Senate as to enable the Senate to fix a time for voting on any question pending before it. When legitimate debate has been exhausted, a further pretense of debate degenerates in a mere vocal obstruction of the public business in defiance of the will of the majority. Instead of debate, it becomes a filibuster. This brings us squarely face to face with the question whether a rule, temporary or permanent, should be adopted under which a bald, defiant filibuster may be terminated.

Until now I have looked with disfavor upon any form of cloture in the Senate. I know that the parliamentary practices observed in other countries and in the States of this Union provide for cloture; but I have wished the Senate might continue to constitute one legislative forum in the world where the right of debate could not be arbitrarily cut off. What I have seen has shaken my attitude on this subject. Debate is one thing; a defiant filibuster, without pretense of legitimate discussion intended to enlighten the Senate or the country, is quite another thing. I believe as much now as ever in allowing a wide range for legitimate discussion on any question before the Senate; but when Senators band together merely to stop the wheels of legislation by processes only intended to prevent action by the Senate, then those engaged upon that enterprise are grossly abusing the privileges of debate.

*Deceased.

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lethal in the Senate than elsewhere, for it is a gun that cannot always be spiked by the endurance of the majority. It is the more effective if used during the closing days of the short session of Congress, which comes to an end on March 4 of the odd years. In these sessions a filibuster cannot be overcome if it is begun near the time for adjournment. The minority cannot be exhausted. There is not sufficient time, and even in the long sessions, the chances of victory are not always with those that desire action.

Since his election in 1924 Vice-President Dawes has been leading a movement to force the Senate to revise its rules. Various considerations are put forth favoring such action by the Senate, but most of the arguments take little account of the fact that the Senate is a unique legislative body on the basis of its representation, and they pay no attention whatever to the peculiar position of the upper house in the congressional system. It is easy to say, as does Senator Pepper, that "the Senate, by sanctioning unlimited debate and by requiring a two-thirds vote to limit it, has, in effect, so amended the Constitution as to make it possible for a 33 per cent minority to block legislation." Incidentally, of course, this 33 per cent minority may nearly or even actually represent a majority of the population of the country; but to state the argument as does Senator Pepper, or to say that every legislative assembly should be able to reach a decision when its majority desires it to act is to ignore certain important questions: What kind of a Senate majority has a "right" to act? If it has such a "right" quickly enforceable, do the checks and balances of the American Constitution remain unaffected? For the fact of the matter is, that, as the much vaunted separation of powers now exists, unrestricted debate in the Senate is the only check upon presidential and party autocracy. The devices that the framers of the Constitution so meticulously set up would be ineffective without the safeguard of senatorial minority action. It is perfectly correct to say that in all foreign legislative systems debate can be restricted, but it is not proper to argue, by analogy, that there should therefore be restrictions in the Senate, for that body is sui generis. The justification of unrestricted debate in the Senate is the nature of our governmental system, and to this, in the discussion of closure, practically no attention has been paid.

Senator Underwood, for example, proposes an addition to the closure rules of the Senate.* His solution is an extreme form of closure. To be sure, after the motion for the previous question was carried, each Senator would have the right to speak for one hour, but if the rule were adopted really effective obstructionist tactics would become impossible. This would, of course, profoundly change the character of procedure in the Senate. Considering the federal character of this body, and its vagarious proportions to the population, it would even if the majority principle were accepted, be a doubtful proposition.

Mr. Dawes's proposal now seems to be that a closure rule should apply only to the appropriation bills. They, the argument is, ought not to be held up by a controversy

*See "Legislative History of Cloture Rules in the Senate," in this issue.

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If obstructive methods like those I have witnessed are to go on unchecked or are to remain permissible or possible then any well-organized minority—even a small minority—may stop the wheels not only of legislation but of the entire Government and might leave the Government in a position of helplessness and despair. It will not do to say that in instances of especially grave concern, where the honor or life of the Nation was at stake, no contingent of Senators could be found who would resort to such methods as are now being pursued. Who can tell what might suddenly arise with respect to the disorders prevalent in Mexico or with respect to the war in Europe which might, in the opinion of the Government and of a large majority of the Congress, necessitate some urgent and important action, offensive or defensive?

Again, the people may be so dissatisfied with the policies and conduct of a political party in power as to turn it out of power and put in another party to establish reforms and follow new lines of public policy. If proceedings such as have disgraced the Senate can be prolonged indefinitely, the party newly put into power could be blocked at any time, so far as legislation goes, by the minority. The Senate minority could laugh in the faces of the President and Congress.

What were these rules of procedure made for? What was the intention of those who framed and made these laws or rules for the government of the Senate? Is it to be presumed that there was an intention, open or concealed, to so frame the rules as to make them a means to prevent the transaction of business by the Senate? I scout the idea. Under the Constitution we know that the Senate is assembled to do business, not to prevent business being done, and we know that the people elect and commission Senators to transact business, not to obstruct it. Therefore the rules must have been made for the purpose of enabling the Senate to proceed with the transaction of its business in an orderly way. That is the spirit of the law. And now let me say that one of the cardinal principles underlying the construction of a law requires that it should be interpreted and administered according to its true spirit and intent.

The best that can be said in defense of the filibustering tactics pursued by Senators is that they are within their technical rights under the letter of the rules. I do not concede that; but I might concede it and take the position, which I do, that such a course is so grossly violative of the spirit and intent of the rules that the Senate itself, acting in defense of its own integrity, should enforce the spirit of the rules and stop this outrageous abuse of its power, its rights and its dignity.—*Extracts, see 9 p. 323.*

HON. FRANK W. MONDELL

Former Member House of Representatives, Wyo., Rep.

THE Senate has no cloture; that is, it has no effective rule under which a majority can bring debate to an end. This fact has led unkindly critics to refer to the Senate as a "debating society." But that is hardly fair to debating societies, because they do eventually decide who wins, while a successful filibuster in the Senate prevents any decision being reached. The Senate, so far as the writer is now informed, is the only legislative body in the world that has not some rule under which the majority

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over some other piece of legislation. Considered by itself this argument is good; the efficiency of the government services may be menaced and the President may be forced to call a special session which, on other grounds, is inadvisable. The fact of the matter is, however, that only by menacing supply can a filibuster be made effective; the obstruction of the Ship Subsidy Bill in 1923, for example, might not have been successful if the leaders of the Senate had not seen in persisting in its advocacy they were endangering the passage of the appropriation bills. This outcome they did not care to risk, and consequently yielded. The gravamen of the controversy was shifted from the minority to the majority. This could never happen if closure could be applied to the appropriation bills. A majority might steam-roller them through and the power of the obstructionists would weaken. This would not be so important if the filibuster were simply to prevent the passage of a law; but it would be vital if the filibuster were to force the majority of the Senate to consent to some action—for example, an investigation of an executive department. This consideration is not mentioned—and may be purposely ignored—by the advocates of closure. Making little or no headway in respect of their proposals for the previous question on all pending business, they seek a specious plausibility in respect of appropriations. These, however, would prove to be the Achilles heel of the filibusterers. So far as the congressional system is concerned, the axiom that a representative body, through its control of the purse can control the executive has little application; shutting off supplies can rarely be used to supervise administration. But this principle, so honored by the theories of constitutional government, is invoked indirectly and quite effectively. It is through their ability to hold up the appropriation bills that a filibustering minority can win a victory.

Mr. Dawes has argued that obstruction keeps the Senate from acting on important laws which go over to the next session. (Mr. Dawes said:)

"In the last five Congresses the Senate bills and resolutions passed by the Senate, with ninety-six members, exceed by 182 the House bills and resolutions passed by the House, with 435 members. The exact figures are 3113 for the Senate and 2931 for the House.

"But more significant even than this is the fact that the Senate, without majority cloture, passes these 3113 bills and resolutions out of a total of 29,332 introduced, while the House, with a majority cloture, passed its smaller number of 2931 out of a total of 82,632 introduced."

These figures, it is hardly necessary to point out, mean nothing unless there is some analysis of the relative merits of the bills introduced in the two branches. Many—perhaps most—of the bills presented are not expected by their authors to be reported from committee.

These laws, however, are mostly of a private and sectional character. Closure would not eliminate them, for they are a result of senatorial courtesy and they would not be possible but for the fact that, in the United States, there is no executive control over the initiation of legislation. This absence of any prior veto, as I have said, is an additional argument in favor of a minority having opportunities to obstruct in order to criticize and secure

Continued on next page

Pro—continued

HON. FRANK W. MONDELL—continued

may, when ready to do so, bring a pending question to a vote and final decision.

There was a time when the fact that the Senate had no cloture was of little importance. Originally it had but 26 Members, and there was so little for it to do that time hung heavily on the hands of the Senators and there was no reason for hurrying anything. In those days and for a long time thereafter no one thought of conducting a filibuster or talking a bill to death. As no one thought of doing it, why have a rule to prevent it? But times and conditions and the Senate have changed. August and dignified representatives of sovereign States, chosen by carefully selected legislatures, have made way for Senators the products of primaries and of universal suffrage. The Senate grew to a membership of 96 when all of our contiguous continental territory came to Statehood.

While the failure of the legislative measure, against which a filibuster is directed, is the most apparent of the unfortunate effects of the lack of a vote-enforcing rule in the Senate, it is by no means the most regrettable or menacing. The indirect effects on the legislative program in general are much more harmful. Unfortunate as it is to have the settlement of a question involving vast expenditures and a Government policy of primary importance delayed indefinitely, there are infinitely greater possibilities of harm in having the entire legislative program of the country subjected for an indefinite period to the whims and caprices of the managers of a chronic filibuster.

The entire appropriation and legislative program of a recent session of Congress was considered in the Senate under a flag of truce in the intervals in which the managers of the Senate filibuster were pleased to make way for measures other than the shipping bill against which the filibuster was directed. No argument is needed to convince anyone at all familiar with legislative procedure that legislation can not be properly and fairly considered under such circumstances. What compromises in legislative plans and provisions were necessary from time to time to secure the temporary muzzling of the filibustering batteries, no one, except those who arranged the details of the legislative truces, can know. That the conditions were favorable to the presentation and acceptance of legislative compromises and conditions no one can deny.

During this period the Senate passed on one occasion more than 100 bills in about the same number of minutes. There was not time to read even the titles in full, if they were long. It is true that some of the measures were comparatively unimportant, but quite a number of them treated of matters of moment and involved heavy expenditures. Appropriation bills containing thousands of items were passed with the reading of only a few Senate amendments. Under the circumstances, this procedure could not be avoided; otherwise appropriation bills would have failed and an extra session would have been inevitable. But the flag of truce was never utilized for the consideration of any measure to which there was serious objection on the part of the minority; and thus the filibuster directed against one measure operated to render impossible the proper consideration of all, and eventually prevented any action on a number of measures of importance in addition to the shipping bill.

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a time for the focussing of public attention on what is proposed. Were responsibility for legislation not enshrouded in committee secrecy and vicariously parcelled out, the inability of the majority to act would have less justification. As it is, therefore, Mr. Dawes's reasoning can be used against his closure proposal. On the other hand, as has been said, the powers of delay given individual Senators force into pending bills some amendments that the Senate leaders would not accept were they free to act as they desired. By and large, however, the astonishing thing is that, in spite of its rules, the Senate gets through a creditable amount of business, and that the log-rolling opportunities are not more abused.

The strength of the case for closure seems the more doubtful when one considers the changing positions of its proponents and antagonists. This is not to say that political consistency is always to be desired, but we find the same Senators approving closure at a time when obstructionist tactics are being used against a measure in which they are interested and advocating unrestricted debate at other times when they are to be found in the filibustering minority.

Such tergiversations are doubtless inevitable, and opinions favorable to closure will be determined by views on pending legislative business or on particular senatorial functions. My own rather decided feeling, that it would be clearly inadvisable to change the present rule, results from the importance that I attach to senatorial investigations of the executive. These, to my mind, would become less numerous and less effective if a Senate majority could act whenever it cared to, and this, as I argue, is the most important, but as yet largely unnoticed, aspect of the controversy over closure.

Investigations by congressional committees are the only control that our system permits, and they must be entered upon with ofttimes inadequate information as to their necessity or the matters to be scrutinized. Ignorance of what the administration does is forced upon Representatives and Senators; they have few if any normal opportunities for gaining knowledge.

The shadow of the always imminent congressional election makes the majority of the House reluctant to probe for possibly embarrassing disclosures, and the interests of the popular chamber are not in administrative efficiency but in sops for parochial interests.

The Department of Justice resolution, indeed, had been favorably considered by the House Rules Committee, but was nevertheless not presented to the House, which, while the Senate searched for possible corruption, was content to investigate the administration of the Stockyards Control Act, the operations of the Army Air Service, the Shipping Board, charges of duplication of securities in the Bureau of Printing and Engraving, and charges that two members of Congress had accepted bribes. That the Senate, and not the more popular branch of Congress, was the grand inquisitor resulted, as I have said from the differences in procedure. The leaders of the House refused to permit it to act; the leaders of the Senate hardly tried to keep it from acting. The Senate is such a forum that the need for investigations could be clearly set forth; closure could not be applied, and were the party steam-roller to be brought out, the minority could have

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Congress Day by Day

A Daily Record of Proceedings on the Floor of the Senate and House

Extra-ordinary Session of the Senate as a Court of Impeachment

Note—The Senate sat as a Court of Impeachment in the trial of Judge George W. English on May 5, 1926. On July 3, 1926 the House Concurrent Resolution 39 was adopted whereby the Senate decided to meet in extra-ordinary session on November 10, 1926, to complete the impeachment trial. Judge English, having resigned in the meantime, the Senate decided on November 10th, to dismiss the impeachment proceedings and postpone final action on the case until December 13, 1926.

Wednesday, November 10, 1926

SENATE:

The Senate met at 12:30 p. m., pursuant to House Concurrent Resolution 39, agreed to July 3, 1926.

The Vice President stated that the hour of 12:30 o'clock p. m., to which the Senate sitting as a Court of Impeachment on May 5, 1926, adjourned, having arrived, the Senate was in session for the trial of the articles of impeachment exhibited by the House of Representatives against George W. English, United States district judge for the eastern district of Illinois.

The managers on the part of the House of Representatives to conduct proceedings in the impeachment of George W. English, United States district judge for the eastern district of Illinois were announced. They were: Representatives Earl C. Michener, of Michigan; Ira G. Hersey, of Maine; Hatton W. Summers, of Texas, and John N. Tillman, of Arkansas.

Mr. Edward C. Kramer, of counsel, was present.

The Chief Clerk began to read the journal of the proceedings of the Senate of Wednesday, May 5, 1926, sitting for the trial of the impeachment of George W. English.

Mr. Curtis asked unanimous consent that the further reading of the Journal be dispensed with, and that it should stand approved.

Mr. Manager Michener stated that he was directed by the managers on the part of the House of Representatives to advise the Senate, sitting as a Court of Impeachment, that in consideration of the resignation of George W. English, district judge of the United States for the eastern district of Illinois, and its acceptance by the President of the United States, the managers on the part of the House have determined to recommend the dismissal of the pending impeachment proceedings. They respectfully requested the Senate, sitting, as a Court of Impeachment, to adjourn to such time as may be necessary to permit the House to take appropriate action.

The order was read and agreed to, "that in view of the statement just made by the chairman of the managers on the part of the House of Representatives, the Senate, sitting for the trial of the impeachment of Judge George W. English, adjourn until Monday, the 13th day of December, 1926, at 1 o'clock p. m.

Mr. Steck announced the death of the Hon. Albert B. Cummins, of Iowa.

Mr. Hale announced the death of the Hon. Bert M. Fernald, of Maine.

Mr. Steck presented a certificate of appointment from the Governor of Iowa, appointing David W. Stewart to succeed the late Senator Cummins. The certificate was ordered to be filed and the oath of office was administered to Mr. Stewart.

The Senate adjourned sine die.

Pro—continued

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This lack of a cloture in the Senate and the legislative throttling which it renders possible have a profound and unfortunate effect upon all legislation and legislative procedure not only in the Senate, but also, unfortunately and unhappily, in the House. No legislative program can be carried out in the most satisfactory fashion without consultation and cooperation between the responsible managers of the two bodies of Congress with regard to the plan of legislative procedure and the time and sequence in which measures are to be considered. Manifestly such agreements and understandings are difficult, if not impossible, in the face of a situation where the legislative managers in one body can form no definite or intelligent opinion as to how long a legislative hold-up may continue or as to when it may be temporarily suspended.

The existence of a state of filibuster affords the finest possible opportunity for the presentation of demands for amendment or modification of any or all of the measures considered. In fact, I have been surprised at times at the moderation displayed in this regard, in view of the extraordinary opportunity. Nevertheless, these legislative hold-ups occur often.

I know there are defenders of the Senate rule of unlimited debate. As I have already pointed out, there was a time when that rule was not objectionable, because it was not abused. The lack of a cloture rule unquestionably magnifies the importance of the individual Senator, but just as certainly reduces the stature of the Senate as a body. No one has the right under our form of government to be the potential possessor of a practically unlimited legislative veto, and that is what the lack of a cloture in the Senate amounts to. The President may exercise the veto only in the open, taking full responsibility, but even then, by a two-thirds vote, the Congress may override him; but the situation existing in the Senate with its lack of a vote-enforcing rule is one in which, particularly when a filibuster is in progress, every Senator carries a potential veto of legislation great and small, important and unimportant.

Some critics of the Congress have been inclined to the view that the rules of the House governing debate are not sufficiently liberal. Ordinarily there is no disposition unduly to limit discussion of the question at issue when it is proceeding in good faith, and the rules are none too drastic when the minority under competent leadership starts a filibuster. The Senate with its small membership may never adopt, and perhaps should not adopt, rules under which debate may be limited to the extent possible under the House rules; but careful students of American legislation must admit that the present situation in the Senate with regard to debate is intolerable. In the consideration of treaties and other matters having to do with foreign relations, in which the jurisdiction of the Senate is exclusive, it may be wise and proper to continue the present rule of procedure in the Senate, though even that may be somewhat doubtful. The important matter, however, is the limitation of debate on legislative questions.

Extracts, see 7, p. 323.

The White House

EDITOR'S NOTE: In the October, 1925, number, THE CONGRESSSIONAL DIGEST inaugurated a new department. This department will report each month the outstanding public matters which have had the attention of the President during the preceding month. Such public matters will include appointments made by the President, addresses delivered by the President, executive orders, and proclamations issued by the President, etc. In the January, 1924, number of THE CONGRESSIONAL DIGEST, the Hon. Wm. Tyler Page, Clerk of the House of Representatives, U. S. Congress, fully described the position of the Executive under the Constitution. The July-August, 1924, number of THE CONGRESSIONAL DIGEST was devoted to a detailed account of the early and present system of election of the President, together with an article on the Powers and Duties of the President under the Constitution.

The President's Calendar
For the Period October 20, 1926 to November 19, 1926

Executive Orders

October 21—An executive order transferring radio station at Alpena, Michigan, from Navy Department to Department of Commerce.

October 22—An executive order transferring lands of St. Joseph's Bay Military Reservation, Florida to Department of Commerce.

October 22—An executive order permitting employees of the Alaska Railroad to become candidates for or hold municipal offices.

October 27—An executive order withdrawing certain lands in Nevada for use as Navy Ammunition depot.

October 29—An executive order temporarily withdrawing, pending archaeological examination by Smithsonian Institution, certain lands in Nevada.

October 29—An executive order restoring to public domain certain lands of Apache Ranger Station, Arizona.

October 29—An executive order withdrawing, pending resurvey, certain lands of Otter Creek Ranger Station, Montana.

October 29—An executive order making certain lands in Hawaii correspond to resurvey.

November 5—An executive order transferring a portion of Naval Reservation, Blythe Island, Georgia, to the Department of Commerce.

November 5—An executive order authorizing Post Master General to determine whether candidates for first, second and third class postmasterships have maintained continuous residence within post-office districts between dates of examinations and dates of selection for appointment.

November 8—An executive order withdrawing certain lands in Utah pending resurvey.

November 13—An executive order modifying boundary limits of Customs Districts Nos. 27 and 28 in California.

November 13—An executive order revoking order of April 11, 1917, affecting timber lands in Alaska.

Proclamations

October 30—A proclamation setting apart Thursday, the twenty-fifth day of November, 1926, as a day of general thanksgiving and prayer.

November 3—A proclamation calling upon the officials to display the flag of the United States on all Government buildings on November 11th, and inviting the people of the United States to observe the day with appropriate ceremonies expressive of gratitude for peace and the desire for the continuance of friendly relations with all other peoples.

Addresses

October 27, 1926—Address of President Coolidge before The American Association of Advertising Agencies, at Washington.

November 11, 1926—Address of President Coolidge at the dedication of the Liberty Memorial at Kansas City, Missouri.

Con—continued

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an effective answer in the form of a filibuster that would endanger the majority's timetable.

The fact of the matter is, therefore, that Senate inquiries are indispensible. They have been, however, under considerable fire since the excesses of 1924. As a part of the Republican programme of economy, party leaders in Washington have proposed to call a halt on investigations because of the matter of expense. Senator Warren, Chairman of the Senate Appropriations Committee, compiled figures showing that in the last sixteen years the Senate had spent $1,383,500 on various inquiries and that the cost of those in progress in February, 1926, would reach $275,000. These, of course, seem large amounts, but the price is a small one for some legislative scrutiny of administration.

The necessity of some agency in the congressional system which will keep legislation of vicarious parentage from being rushed to the statute books is the more immediate because of the separation of powers, and because no definite groups of individuals stand sponsors for a particular proposal. The point is that with responsibility divided and confused, the check which is on occasion exerted by senatorial obstructionists is of great value and ought not to be given up. If filibustering Senators have no justification for their course they will speedily be hoist with their own petard.

The Senate's collective judgement on legislation cannot fail to be superior to the judgment of the House which too frequently represents no more than the hasty opinion of a few leaders.

But it is as a critic of the executive that the Senate does its most notable work. Here complete freedom of debate and the absence of closure except as a real emergency measure are more indispensable than in respect of legislation. Criticisms of the Senate because time is wasted, irrelevant and extreme talk is indulged in, and logrolling is prevalent, overlook the fact that scrutiny of administration—a normal function of legislative assemblies—can only in the United States be scrutiny by the Senate. Fixed terms and executive irresponsibility make the need for this scrutiny more urgent. The role of the American Senate is a convincing justification of the bicameral theory.—*Extracts, see 8, p. 323.*

The Supreme Court of the United States

EDITOR'S NOTE: This department of THE CONGRESSIONAL DIGEST began with Vol. 3, No. 1, and is devoted to a brief non-technical review of current decisions of the U. S. Supreme Court which are of general public interest. The June, 1923, number of the THE CONGRESSIONAL DIGEST printed the provisions of the Constitution of the United States upon which the Judicial Branch of our Federal Government rests. This number contained an account of the U. S. Supreme Court and the system of inferior federal courts, the relation of the Judicial Branch to the Legislative and Executive Branches of the Federal Government, and the relation between the Federal Judiciary and the States. The U. S. Supreme Court, its present procedure and work, were also described.

On November 1st the Court rendered its last decisions before adjourning for the recess of three weeks. The Court will again convene November 22nd.

The October, 1926 Term—October, 1926-June, 1927

The Case—No. 2. Lois P. Myers, administratrix of Frank S. Myers, Appellant, vs. The United States. Appeal from the United States Court of Claims.

The Decision—The majority of the Court ruled that the Act of July 12, 1876 (19 Stat. 80, C. 179) under discussion, by which the unrestricted power of removal of first class postmasters is denied to the President, is in violation of the Constitution and therefore invalid.

The Opinion—The opinion of the Court was delivered by Mr. Chief Justice Taft, and is in part as follows:

Myers, appellant's intestate, was on July 21, 1917, appointed by the President, by and with the advice and consent of the Senate, to be a postmaster of the first class at Portland, Oregon, for a term of four years. On January 20, 1920, Myers' resignation was demanded. He refused the demand and was removed from office by order of the Postmaster General, acting by direction of the President. On April 21, 1921, he brought this suit in the Court of Claims for his salary from the date of his removal, which amounted to $8,838.71. The Court of Claims gave judgment against Myers and this is an appeal from that judgment.

By the 6th section of the Act of Congress of July 12, 1876, under which Myers was appointed with the advice and consent of the Senate as a first-class postmaster, it is provided that

"Postmasters of the first, second and third classes shall be appointed and may be removed by the President by and with the advice and consent of the Senate and shall hold their offices for four years unless sooner removed or suspended according to law."

The Senate did not consent to the President's removal of Myers during his term. If this statute in its requirement that his term should be four years unless sooner removed by the President by and with the consent of the Senate is valid, the appellant, Myers' administratrix, is entitled to recover his unpaid salary for his full term and the judgment of the Court of Claims must be reversed. The Government maintains that the requirement is invalid, for the reason that under Article II of the Constitution the President's power of removal of executive officers appointed by him with the advice and consent of the Senate is full and complete without consent of the Senate. If this view is sound, the removal of Myers by the President without the Senate's consent was legal and the judgment of the Court of Claims against the appellant was correct and must be affirmed, though for a different reason from that given by that court. We are therefore confronted by the constitutional question and cannot avoid it.

The question where the power of removal of executive officers appointed by the President by and with the advice and consent of the Senate was vested, was presented early in the first session of the First Congress.

May 18, 1789, Mr. Madison moved in the Committee of the Whole that there should be established an executive department of Foreign Affairs, at the head of which should be a Secretary to be appointed by the President and with the advice and consent of the Senate, and to be removable by the President. The committee agreed to the establishment of a Department of Foreign Affairs, but a discussion ensued as to making the Secretary removable by the President. After a very full discussion the question was put: shall the words "to be removable by the President" be struck out? It was determined in the negative—yeas 20, nays 34.

It is very clear from this that the exact question which the House voted upon was whether it should recognize and declare the power of the President under the Constitution to remove the Secretary of Foreign Affairs without the advice and consent of the Senate. That vote was a legislative declaration that the power to remove officers appointed by the President and the Senate vested in the President alone, and until the Johnson Impeachment trial in 1868, its meaning was not doubted.

The reasons advanced by Mr. Madison, in this case, were, first, that Article II by vesting the executive power in the President was intended to grant to him the power of appointment and removal of executive officers except as thereafter expressly provided in that Article.

The second view of Mr. Madison was that not only did the grant of executive power to the President in the first section of Article II carry with it the power of removal, but the express recognition of the power of appointment in the second section enforced this view on the well approved principle of constitutional and statutory construction that the power of removal of executive officers was incident to the power of appointment. This principle as a rule of constitutional and statutory construction, then generally conceded, has been recognized ever since. The reason for the principle is that those in charge of and responsible for administering functions of government who select their executive subordinates need in meeting their responsibility to have the power to remove those whom they appoint.

The power to prevent the removal of an officer who has served under the President is different from the authority to consent to or reject his appointment. When a nomination is made, it may be presumed that the Senate is, or may become, as well advised as to the fitness of the nominee as the President, but in the nature of things the defects in ability or intelligence or loyalty in the administration of the laws of one who has served as an officer under the President, are facts as to which the President, or his trusted subordinates, must be better informed than the Senate, and the power to remove him may, therefore, be regarded as confined for very sound and practical reasons, to the governmental authority which has adminis-

trative control. The power of removal is incident to the power of appointment, not to the power of advising and consenting to appointment, and when the grant of the executive power is enforced by the express mandate to take care of that the laws be faithfully executed, it emphasizes the necessity for including within the executive power as conferred the exclusive power of removal.

Another argument urged against the constitutional power of the President alone to remove executive officers appointed by him with the consent of the Senate is that in the absence of an express power of removal granted to the President, power to make provision for removal of all such officers is vested in the Congress by section 8 of Article I.

In the third place, Mr. Madison answered this argument in part as follows:

"When I consider that the Constitution clearly intended to maintain a marked distinction between the Legislative, Executive and Judicial powers of Government; and when I consider that if the Legislature has a power, such as is contended for, they may subject and transfer at discretion powers from one department of our Government to another; they may, on that principle, exclude the President altogether from exercising any authority in the removal of officers; they may give to the Senate alone, or the President and Senate combined; they may vest it in the whole Congress; or they may reserve it to be exercised by this house. When I consider the consequences of this doctrine, and compare them with the true principles of the Constitution, I own that I cannot subscribe to it."

Mr. Madison showed, in the fourth place, the unreasonable character of the view that the Convention intended, without express provision, to give to Congress or the Senate, in case of political or other differences, the means of thwarting the Executive in the exercise of his great powers and in the bearing of his great responsibility by fastening upon him, as subordinate executive officers, men who by their inefficient service under him, by their lack of loyalty to the service, or by their different views of policy might make his taking care that the laws be faithfully executed most difficult or impossible.

An argument was advanced that the present case concerns only the removal of a postmaster, that a postmaster is an inferior officer, that such an office was not included within the legislative decision of 1789, which related only to superior officers to be appointed by the President by and with the advice and consent of the Senate.

The power to remove inferior executive officers, like that to remove superior executive officers, is an incident of the power to appoint them, and is in its nature an executive power. The authority of Congress given by the excepting clause to vest the appointment of such inferior officers in the heads of departments with power to remove. It has been the practice of Congress to do so and this Court has recognized that power. The Court also has recognized in the *Perkins* case that Congress in committing the appointment of such inferior officers to the heads of departments may prescribe incidental regulations controlling and restricting the latter in the exercise of the power of removal. But the Court never has held, nor reasonably could hold, although it is argued to the contrary on behalf of the appellant, that the excepting clause enables Congress to draw itself, or to either branch of it, the power to remove or the right to participate in the exercise of that power. To do this would be to go beyond the words and implications of that clause and to infringe the constitutional principle of the separation of governmental powers.

Summing up then the facts as to acquiescence by all branches of the Government in the legislative decision of 1789 as to executive officers whether superior or inferior, we find that from 1789 until 1863, a period of 74 years, there was no act of Congress, no executive act, and no decision of this court at variance with the declaration of the First Congress, but there was, as we have seen, clear affirmative recognition of it by each branch of the Government.

Our conclusion on the merits sustained by the arguments before stated is that Article II grants to the President the executive power of the Government, i. e., the general administrative control of those executing the laws, including the power of appointment and removal of executive officers, a conclusion confirmed by his obligation to take care that the laws be faithfully executed; that Article II excludes the exercise of legislative power by Congress to provide for appointments and removals except only as granted therein to Congress in the matter of inferior offices; that Congress is only given power to provide for appointments and removals of inferior officers after it has vested, and on condition that it does vest, their appointment in other authority than the President with the Senate's consent; that the provisions of the second section of Article II, which blend action by the legislative branch, or by part of it, in the work of the executive limitations to be strictly construed and not to be extended by implication; that the President's power of removal is further established as an incident to his specifically enumerated function of appointment by and with the advice of the Senate, but that such incident does not by implication extend to removals the Senate's power of checking appointments; and finally that to hold otherwise would make it impossible for the President in case of political or other difference with the Senate or Congress to take care that the laws be faithfully executed.

In 1876 the act here under discussion was passed, making the consent of the Senate necessary both to the appointment and removal of first, second and third class postmasters.

There are other later acts pointed out in which doubtless the inconsistency with the independent power of the President to remove is clearer, but these cannot be said to have really received the acquiescence of the excutive branch of the Government. Whenever there has been a real issue made in respect to the question of Presidential removals, the attitude of the Executive in Congressional message has been clear and positive against the validity of such legislation.

The fact seems to be that all departments of the Government have constantly had in mind, since the passage of the Tenure of Office Act, that the question of power of removal by the President of officers appointed by him with the Senate's consent, has not been settled adversely to the legislative action of 1789 but, in spite of Congressional action, has remained open until the conflict should be subjected to judicial investigation and decision.

The elements that enter into our decision of this case are first, a construction of the Constitution made by a Congress which was to provide by legislation for the organization of the Government in accord with the Constitution which had just then been adopted, and in which there were, as representatives and senators, a considerable number of those who had been members of the Conven-

tion that framed the Constitution and presented it for ratification. It was the Congress that launched the Government. This construction was followed by the legislative department and the executive department continuously for seventy-three years, and this, although the matter in the heat of political differences between Executive and the Senate in President Jackson's time, was the subject of bitter controversy, as we have seen. This Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our Government and framers of our Constitution were actively participating in public affairs acquiesced in for a long term of years fixes the construction to be given its provisions.

For the reasons given, therefore, the provision of the law of 1876 by which the unrestricted power of removal of first class postmasters is denied to the President is in violation of the Constitution and invalid. This leads to an affirmance of the judgment of the Court of Claims. —*Extracts.*

Mr. Justice Holmes, Mr. Justice McReynolds and Mr. Justice Brandeis dissented from the opinion of the Court.

Mr. Justice Holmes dissented as follows:

The arguments drawn from the executive power of the President, and from his duty to appoint officers of the United States (when Congress does not vest the appointment elsewhere), to take care that the laws be faithfully executed, and to commission all officers of the United States, seem to me spiders' webs inadequate to control the dominant facts.

We have to deal with an office that owes its existence to Congress and that Congress may abolish tomorrow. Its duration and the pay attached to it while it lasts depend on Congress alone. Congress alone confers on the President the power to appoint to it and at any time may transfer the power to other hands. With such power over its own creation, I have no more trouble in believing that Congress has power to prescribe a term of life for it free from any interference than I have in accepting the undoubted power of Congress to decree its end. I have equally little trouble in accepting its power to proiong the tenure of an incumbent until Congress or the Senate shall have assented to his removal. The duty of the President to see that the laws be executed is a duty that does not go beyond the laws or require him to achieve more than Congress sees fit to leave within his power.

Cloture in the British Parliament—*Continued from page* 300

Reform Act for a considerable time, and it was not until forty-seven years later that "the observance of understanding," on which every constitutional government depends, was rudely abandoned by the Irish Nationalists.

It was not until the next Parliament, elected in 1880 with a Liberal majority, that both parties saw the necessity of making essential changes in the rules of business. Matters were brought to a head by Speaker Brand's coup d'etat on January 31, 1881, when after a sitting of forty-one hours, from 4 P. M. on Monday to 9 A. M. on Wednesday, he made a short and dignified speech to the House and simply put the question. From that hour, it was recognized that the rules of procedure, once a method of convenience, were become a weapon of warfare. From that day to this successive Governments have tampered with the rules of procedure, modifying or abolishing old rules, and passing new ones, until the Standing Orders of the House of Commons make a quite complicated chapter of technical knowledge.—*Extracts, see 8, p. 323.*

Glossary of Parliamentary Terms—*Continued from page* 301

adventurers who, after the termination of the war between Mexico and the United States, organized expeditions within the United States to take part in the West Indian and Central American revolutions. From this has sprung the modern use of the word to imply one who engages in private, unauthorized and irregular warfare against any State.—(*Encyclopaedia Brittannia, Eleventh Edition.*)

In the United States a filibuster is an organized effort by members of the minority in a legislative body to resort to irregular or obstructive tactics to prevent the adoption of a measure or procedure which is favored by the majority.—(*Century Dictionary.*)

Motions—This is a formal proposition offered for the consideration of an assembly, by means of which business is usually introduced.—(*Cyclopedia of American Government.*)

Parliamentary Law—A system of common rules and practices for the government of deliberative assemblies is known as parliamentary law. To this same body of rules and practices the name rules or order is also applied. The rules included are the ones that are employed in assemblies generally. In individual assemblies there are often special rules which are known as standing rules. These arise as motions in the assembly and are adopted just as any other motions or resolutions are. The record of standing rules is found in the written minutes of the organization. The rules of order are usually those contained in some manual of parliamentary law.

Thomas Jefferson is known as the pioneer American parliamentarian and Jefferson's Manual is still embodied in the Rules and Practices of Congress.—(*Cyclopedia of American Government.*)

Point of Order—or a question of order—This calls attention to a violation of a rule of the assembly. When the attention of the chair has been called to the broken rule, the chair gives the decision as to whether the rule has been broken or not. An appeal may be made from the decision of the chair only on questions involving the judgment of the chair and does not apply to cases where the rule plainly states what should be done.

Previous Question—This is an effective method of bringing debate to a close. When a member in charge of a bill wishes to bring it to a vote he moves that the previous question be now put. The House then votes on the bill itself.—(*Smith's Dictionary of American Politics.*)

Special Orders—The privilege given by Rule XI, Clause 56, to the Committee on Rules to report "special orders" for the consideration of individual bills or clauses of bills. —(*House Manual, 1921, p. 310.*)

Suspension of Rules—This may be applied only to standing rules and rules of order, and make temporarily possible an action contrary to such rules.—(*Cyclopedia of American Government.*)

Recent Government Publications of General Interest

The following publications issued by various departments of the Government may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D. C.

AGRICULTURE

"Costs of Transportation and Handling of Argentine Wheat;" by Harold R. Brown, and Brice M. Mace, Jr. (Trade Information Bulletin 439.) Price, 10 cents. Hauling from farms to railroad stations, country elevators and warehouses, transportation from country railroad station to seaboard, railroad charges at ports, etc.

"Meat Charts;" prepared in division of livestock, meats and wool. (Department of Agriculture.) Price, 50 cents the set. Beef chart, lamb chart, fresh pork chart, and veal chart.

"Methods of Packing Eggs and of Buffing and Bracing Cases of Eggs in Carload Shipments;" by Rob R. Slocum. (Department of Agriculture Circular 391.) Price, 5 cents. Introduction, shipments made, eggs used, methods of packing, methods of handling eggs and marking cases, types of cars used, etc.

"Milk and its Uses in the Home." (Farmers' Bulletin 1359.) Price, 5 cents. Composition and food value of milk, digestion of milk, milk for infants, bacteria in milk, pasteurization of milk, etc.

"Regulations of Secretary of Agriculture under United States Warehouse Act of August 11, 1916, as amended, Regulations for Warehousemen Storing Cottonseed for Commercial but not for Seed Stock Purposes." (Service and Regulatory Announcements 102.) Price, 5 cents.

"United States Census of Agriculture, 1925, Minnesota, Statistics by Counties, Final Figures." Price, 10 cents. Introduction, State tables, county tables, and map.

ARMY DIRECTORY

"Army List and Directory, September 1, 1926." (The Adjutant General's Office, War Department.) Price, 30 cents. Abbreviations, Army Corps areas and Departments, disciplinary barracks, general hospitals, general Service Schools, special Service Schools, depots of the zone of the interior, etc.

AUTOMOTIVE EQUIPMENT

"Automotive Equipment and Construction Preferences in Foreign Countries;" compiled by H. C. Schuette. (Trade Information Bulletin 431.) Price, 10 cents. Importance of considering foreign equipment, general analysis, North America, Bahama Islands, Barbados, Canada, Costa Rica, Cuba, etc.

COURTS

"Decisions of Courts and Opinions Affecting Labor, 1925." (Labor Bulletin 417.) Price, 40 cents. Introduction, opinions of the Attorney General, hours of labor, retirement of public employees, steam vessels, workmen's compensation, aliens, associations, benefit funds, etc.

"Register of the Department of Justice and the Courts of the United States, thirty-first edition, Sept. 1, 1926." Price, 50 cents. Principal officers of the department in Washington, United States courts, miscellaneous, with index to subjects.

DENTAL GOLD ALLOYS

"Analysis of Dental Gold Alloys;" by William H. Swanger. (Bureau of Standards Scientific Papers 532.) Price, 10 cents. Introduction, sampling, reagents, qualitative examination, determination of silver, iridium, tin, etc.

FLAGS

"Commercial Use of National Flags and Public Insignia;" by Bernard A. Kosicki. (Trade Information Bulletin 438.) Price, 10 cents. Legislative history, text of State laws, uniform flag act, laws, foreign countries, etc.

FOOTWEAR

"Export Trade in Rubber Footwear, 1925;" by E. G. Holt. (Trade Information Bulletin 435.) Price, 10 cents. General survey, United States exports of rubber footwear, Canadian exports of rubber footwear, British exports of rubber footwear, Austrian exports of rubber footwear, etc.

FOREIGN MARKETS

"Markets of Central Chile;" by Rollo S. Smith. (Trade Information Bulletin 440.) Price, 10 cents. Central provinces, physical characteristics, climate, Province of Valparaiso, Province of Santiago, Province of O'Higgins, etc.

FOREIGN TRADE

"Foreign Trade of the United States in the Calendar Year 1925, According to the International Statistical Classification." (Trade Information Bulletin 437.) Price, 10 cents. Imports and exports in 1925, by international classification, and imports and exports in 1925, by countries.

GARDENING

"Dry-Land Gardening at the Northern Great Plains Field Station, Mandan, N. Dak.;" by T. K. Killand. (Department of Agriculture Bulletin 1427.) Price, 5 cents. Introduction, climate, gardening experiments, suggestions for gardening on the northern Great Plains, and conclusions.

GLUE

"Use of Glue in Coated Paper;" by Geo. K. Hamill, V. H. Gottschalk, and Geo. W. Bicking. (Bureau of Standards Technologic Papers 323.) Price, 15 cents. Introduction, materials used in manufacture of coated papers, materials used in this investigation, paper-coating equipment used, etc.

GREAT LAKES TRANSPORTATION

"Transportation on the Great Lakes." Price, $1.50. General description of the Great Lakes and their connecting channels and harbors, laws, treaties, and regulations, vessels of the Great Lakes, commerce, the grain movement, the ore movement, etc.

HOSIERY

"Standard Hosiery Lengths;" by E. M. Schenke. (Bureau of Standards Technologic Papers 324.) Price, 10 cents. Introduction, acknowledgments, purpose, method of measuring the length of hosiery, etc.

INTERSTATE COMMERCE COMMISSION

"Interstate Commerce Commission Reports, Vol. 101, Decisions of the Interstate Commerce Commission of the United States, June-July, 1925." Price, $2.25. Members of the commission, table of cases reported, table of cases cited, opinions of the commission, table of commodities, etc.

IRON BARS

"Standard Specifications for Stay-Bolt, Engine-Bolt, and Extra-Refined wroughtiron bars." (Industrial Standards 64.) Price, 5 cents. Manufacture, chemical properties and tests, physical properties and tests, permissible variations in gauge, finish, marking, inspection and rejection, etc.

LIGHT AND POWER

"Central Light and Power Plants in Africa, with notes on the Market for Electrical Goods;" by Howard E. Way. (Trade Information Bulletin No. 423). Price, 10 cents. Central light and power plants in Africa, Abyssinia, Belgian Congo, British Africa, etc.

LIVESTOCK

"Market Classes and Grades of Livestock;" by C. E. Gibbons. (Department Bulletin 1360). Price, 15 cents. Need for standardization on livestock markets, definition of classifying and grading, purpose of classifying and grading, standard classes and grades, definition of terms, etc.

LUMBER

"The Australian Lumber Market;" by Julian B. Foster. (Trade Information Bulletin 436.) Price, 10 cents. Increase in imports-recent production figures, position of United States in Australian market, Australian timber resources, transportation, lumber market of New South Wales, lumber market of Victoria, etc.

MARKETING

"Marketing Barreled Apples;" by George B. Fiske. (Department of Agriculture Bulletin No. 1416). Price, 20 cents. Development of commercial apple industry, features of barreled apple producing regions, advantages and drawbacks, general feature of commercial orcharding, etc.

"Marketing Lettuce;" by Chas. W. Hauck. (Department of Agriculture Bulletin No. 1412). Price, 15 cents. A growing industry, producing areas, types and varieties, harvesting, grading and packing, loading and shipping methods, car-lot movement and distribution, etc.

"Marketing Western Boxed Apples;" by G. B. Fiske and Raymond R. Pailthorp. (Department of Agriculture Bulletin No. 1415). Price, 20 cents. Story of the boxed apple, commercial production, harvesting, inspection, financing, selling methods, using cull applies, sales in city markets, etc.

"Meat Marketing in Great Britain;" by J. E. Wrenn and E. C. Squire. (Trade Promotion Series No. 35). Price, 10 cents. British meat supplies, marketing methods, the Irish bacon industry, farm animals, and British food laws.

MARRIAGE AND DIVORCE

"Marriage and Divorce, 1924." (Bureau of Census, Department of Commerce.) Price, 15 cents. Introduction, marriage statistics, divorce statistics, marriage and divorce in cities, and tables.

MATERNITY AND INFANCY

"The Promotion of the Welfare and Hygiene of Maternity and Infancy." (Children's Bureau Publication No. 156). Price, 15 cents. Letter of transmittal, introduction, State administration, principal activities of the individual States, Federal administration with appendixes and maps.

MINING ACCIDENTS

"Metal Mine Accidents in the United States, 1924;" by William W. Adams. (Mines Bureau Bulletin No. 264). Price, 15 cents. Introduction, acknowledgments, scope of statistics, mines classified, etc.

MORTALITY

"Maternal Mortality;" by Robert Morse Woodbury. (Children's Bureau Publication No. 158). Price, 25 cents. Letter of transmittal, introduction, definition and measurement of puerperal mortality, deaths from puerperal causes in the United States, pathological causes of puerperal mortality, etc.

MOTOR-BUS

"Motor-Bus Transportation: Part III, Asia, Africa, and Oceania;" by H. C. Schuette. (Trade Information Bulletin No. 416). Price, 10 cents. General aspects, types of duties, sales methods, and market outlook, etc.

NEWFOUNDLAND

"Newfoundland, a Commercial and Industrial Survey;" by Lynn W. Meekins. (Trade Information Bulletin No. 409). Price, 10 cents. General economic conditions, administrative organization, geography, climate, population, education, and standard of living, etc.

OCEAN FREIGHT RATES

"Ocean Freight Rates in United States Foreign Trade;" by A. E. Sanderson. (Trade Information Bulletin 434.) Price, 10 cents. Introduction, liners and tramps, liner conferences, ocean freight rates, factors influencing rates on a given route, directory of shipping lines, etc.

PAPER

"Paper and Paper Products in Central America, Based on Reports Submitted by Consular Officers of the Department of State;" by J. W. Vander Laan. (Trade Information Bulletin No. 414). Price, 10 cents. Foreign and native competition, United States exports to Central America, varieties in demand, market, etc.

PEARLS

"Pearl Essence, its History, Chemistry, and Technology;" by Harden F. Taylor. (Appendix 2 to the Report of the U. S. Commissioner of Fisheries for 1925.) Price, 5 cents. Introduction, historical sources and distribution of guanin among animals, properties of pearl essence, processes of making pearl essence, etc.

PERIODICALS

"Index of Foreign, Commercial, and Economic Periodicals, Currently Received in Departmental and Other Institutional Libraries Located at Washington, D. C.;" Price, 15 cents. Compiled by Dr. Carlton C. Rice. (United States Tariff Commission, Aug. 1926.)

PETROLEUM

"British Petroleum Trade in 1925." (Trade Information Bulletin No. 407). Price, 10 cents. This publication is based on reports from American consular officers and from the office of the American commercial attache in England.

POTTERY INDUSTRY

"Wages, Hours, and Productivity in the Pottery Industry, 1925." (Labor Bulletin 412.) Price, 30 cents. Introduction and summary, comparison of hourly earnings, piece-rate changes since 1911, general tables, index numbers of production and employment, 1923 to 1925, etc.

POULTRY AND EGG INDUSTRY

"The Poultry and Egg Industry in Europe;" by Howard C. Pierce. (Department Bulletin No. 1385). Price, 15 cents. Interest in Foreign poultry production, production of poultry in Europe, commercial handling and marketing, preparing American poultry to meet foreign demand, and American eggs for export, etc.

PUBLIC FINANCE

"Colombian Public Finance: Part I, Historical Survey, Fiscal System National Revenue and Expenditures, Railroads;" by C. A. McQueen. (Trade Information Bulletin No. 417). Price, 10 cents. Historical survey, early conditions, economic beginnings, gold mining, agricultural development, trade with the United States, etc.

PUBLIC HEALTH

"A Health Study of Ten Thousand Male Industrial Workers;" by Rollo H. Britten and L. R. Thompson. (Public Health Bulletin No. 162). Price, 30 cents. Introduction, racial distribution in surveyed industries, physiological measurements, pulse rate, vital capacity and chest measurements, height, weight, diseases and defects, miscellaneous phases of examination, summary by industry, summary and conclusions with appendix.

PUBLIC LAWS

"Statutes of United States of America Passed at the First Session of the Sixty-Ninth Congress, 1925-1926, and Concurrent Resolutions of the two houses of Congress, Recent Treaties and Executive Proclamations." Price, $1.75.

RADIO

"Amateur Radio Stations of the United States, Edition of June 30, 1926." (Department of Commerce, Bureau of Navigation.) Price, 25 cents. Notes, nine district headquarters, special land stations, alphabetically by names of stations, special land stations grouped by districts, with appendix.

"Establishment of Radio Standards of Frequency by the Use of a Harmonic Amplifier;" by C. B. Jolliffe and Grace Hazen. (Standards Bureau Scientific Papers No. 530). Price, 10 cents. Introduction, description of the method, frequency meter (wave meter) standardization, piezo oscillator standardization, comparison of two audio-frequencies, with summary.

"World Radio Markets in 1926;" by Lawrence D. Batson. (Trade Information Bulletin 433.) Price, 10 cents. General remarks, market statistics, market conditions, seasonal demand, geographical information, climate, radio season, humidity and insulation, distant reception, power, etc.

RAILWAYS

"Railways of South America: Part I, Argentina;" by George S. Brady. (Trade Promotion Series 32). Price, 50 cents. Letter of submittal, introduction, description of Argentina, early history and development of railways in Argentina, Argentine railway laws, railway organization and control, fuel and water supplies, supply of materials, tariffs, etc.

"Thirty-Eighth Annual Report on the Statistics of Railways in the United States, for the Year Ended December 31, 1924, Including also Statistics Based on the Monthly Reports of Railways for the Year 1925, as well as Selected Data Relating to Other Common Carriers Subject to the Interstate Commerce Act, for the Years 1924 and 1925." Price, $1.50. Price, $1.50.

REVENUE ACTS 1924 AND 1926

"Bulletin K, Comparison of Titles and Sections of the Revenue Acts of 1924 and 1926." Price, 35 cents. General definitions, income tax, estate tax, gift tax, cigars, tobacco, and manufacturers tax, general provisions, reduction of income tax payable in 1924, etc., with alphabetical index.

RURAL EDUCATION

"Improvement of Instruction in Rural Schools Through Professional Supervision." (Education Bulletin, 1926, No. 12.) Price, 10 cents. Introductory statement, aims and purposes of the conference, greeting from President Bruce Payne, George Peabody College for teachers, Nashville, Tenn., teaching problems, etc.

SAFETY CODES

"Safety Code for Paper and Pulp Mills." (Labor Bureau Bulletin No. 410). Price, 15 cents. Introduction, the yard, preparing pulp wood, rag and old paper preparation, acid making, chemical processes of making pulp, preparing pulp for paper machine, machine room, finishing room, with appendix.

SEEDS AND PLANTS

"Seeds and Plants Imported by the Office of Foreign Plant Introduction, Bureau of Plant Industry, During the Period

from October 1 to December 31, 1923 (S. P. I. Nos. 59024 to 59454)." (Agriculture Department, Inventory 77). Price, 5 cents. Introductory statement, inventory, and index of common and scientific names.

SHEEP

"Diseases of Sheep;" by Bernard A. Gallagher. (Farmers' Bulletin No. 1155, revision). Price, 5 cents. Infectious diseases, general diseases, diseases of the head and air passages, etc.

SHIPS

"Merchant Vessels of the United States (Including Yachts and Government Vessels). Year ended June 30, 1925." Price, $1.50. Explanations and abbreviations, merchant vessels, vessels lost during year, Government vessels, and Philippine Island vessels, etc.

SIBERIA

"Siberia, its Resources and Possibilities;" by Boris Baievsky. (Trade Promotion Series No. 36). Price, 15 cents. Letter of submittal, introduction, agriculture and related industries, fishing and fur industries, forest resources, metals and minerals, transportation and communication, industry and trade, with maps.

STAIN REMOVALS

"Stain Removal from Fabrics, Home Methods." (Department of Agriculture, Farmers' Bulletin 1474.) Price, 5 cents. General principles of stain removal, nature of the stain, kind of fabric and linen, wool and silk, etc.

STANDARDIZATION

"Short Tests for Sets of Laboratory Weights;" by A. T. Pienkowsky. (Bureau of Standards Scientific Papers No. 527). Price, 10 cents. Introduction, rough checks for gross errors, the balance, standards, notation, general outline of calibrations, shortest system of calibration, effect of weighing methods, sign and use of corrections, etc.

"Standard Specifications for Structural Steel for Ships." (Industrial Standards No. 36). Price, 5 cents. Preface, manufacture, chemical properties and tests, physical properties and tests, permissible variations in weight and thickness, finish, marking and inspection and rejection.

STEEL WHEELS

"Standard Specifications for Wrought Solid Carbon-Steel Wheels for Steam Railway Service." (Industrial Standards 15.) Price, 5 cents. Manufacture, chemical properties and tests, mating, permissible variations in dimensions, finish, marking, inspection and rejection, etc.

TANNING MATERIALS

"Analysis of Synthetic Tanning Materials;" by Edward Wolesensky. (Standards Bureau Technologic Papers No. 216). Price, 5 cents. Introduction, acidity, total sulphur, total inorganic matter, free sulphuric acid and sulphates, non-volatile matter, total organic matter, tanning material, etc.

TAXATION

"Regulations 70 (1926 Edition) Relating to the Estate Tax Under Title 3 of the Revenue Act of 1926." Price, 20 cents. Definitions, description of tax, gross estate, dower and curtesy, transfers by decedent in his lifetime, etc.

TIRES

"Endurance Tests of Tires;" by W. L. Holt and P. L. Wormeley. (Standards Bureau, Technologic Papers No. 318). Price, 10 cents. Introduction, development of test methods, results of tests, and tests of types and sizes of tires not shown on charts.

TOBACCO

"Stocks of Leaf Tobacco and the American Production, Imports, Exports, and Consumption of Tobacco and Tobacco Products, 1925." (Bureau of Census Bulletin 159.) Price, 10 cents. Scope of the inquiry, comparative data of tobacco stocks, collection of the statistics, distribution of reports, etc.

VETERANS

"Laws relating to United States Veterans' Bureau and War Risk Insurance;" compiled by Elmer A. Lewis. Price, 15 cents.

"The World War Veterans' Act, 1924, with Amendments Prior to July 3, 1926." Price, 10 cents. An act to consolidate, codify, revise, and re-enact the laws affecting the establishment of the United States Veterans' Bureau and the administration of the War Risk Insurance Act, as amended, and the Vocational Rehabilitation Act, as amended.

VOCATIONAL EDUCATION

"Vocational Education for Those Engaged in the Retail Grocery Business." (Vocational Education Bulletin No. 107). Price, 25 cents. Planning the program, and sample of instructional material on increasing sales for conferences of those in the retail grocery business.

WAGES AND HOURS

"Union Scale of Wages and Hours of Labor, May 15, 1925." (Labor Bureau Bulletin No. 404). Price, 25 cents. Average hourly rates of wages and number of changes in union scales, weekly hours of labor, by trades, index numbers of union scale of wages and hours of labor, 1907 to 1925, etc., with table.

ZONING

"Standard State Zoning Enabling Act, under which municipalities may adopt zoning regulations." (Advisory Committee on Zoning.) Price, 5 cents. Foreword, explanatory notes in general, a standard State zoning enabling act, etc.

Sources from Which Material in This Number is Taken

Articles for which no source is given have been specially prepared for this number of The Congressional Digest

1—"The Senate of the United States" by Henry Cabot Lodge: New York, Charles Scribner's Sons, 1921.

2—Article in "Saturday Evening Post," November 28, 1925.

3—Address by Vice-President Dawes before Manufacturers' Club of Philadelphia, February 6, 1926.

4—From "The Searchlight on Congress," May, 1925.

5—The Senate Manual, 1925.

6—Article in "New York Times," March 15, 1925.

7—Congressional Record, January 3, 1924.

8—"The American Senate" by Lindsay Rogers: New York, Alfred A. Knopf, 1926.

9—Congressional Record, February 13, 1915.

10—Congressional Record, January 5, 1922.

11—Article in "New York Times," February 24, 1926.

12—The Congressional Record, January 21, 1891.

13—Congressional Record, February 13, 1915.

14—Congressional Record, July 6, 1922.

15—Article in "Saturday Evening Post," February 13, 1926.